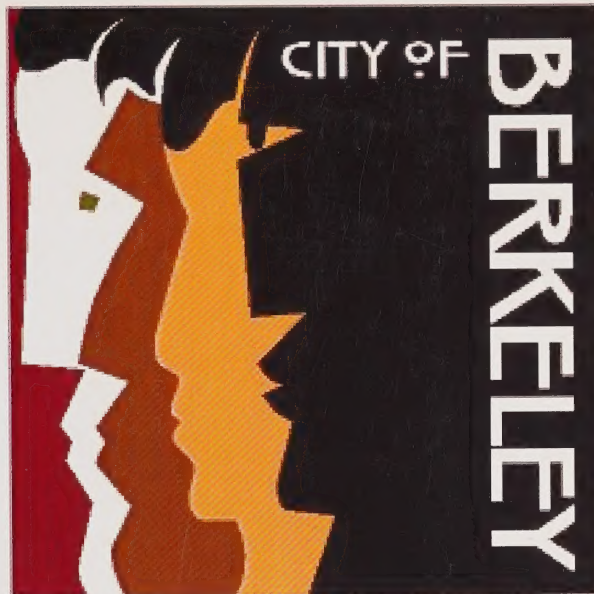


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COMMISSIONERS' MANUAL

BACKGROUND INFORMATION
RULES AND PROCEDURES

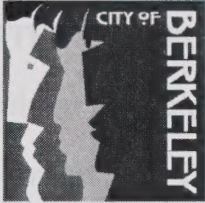
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#### MESSAGE FROM THE CITY CLERK:

*Members of boards and commissions provide an invaluable service to our City. They advise the City Council on a wide variety of subjects by making recommendations on important policy matters. Over the years, the services and programs provided by the City have expanded. Without the assistance of the various boards and commissions, the City Council could give many complex and significant matters only a perfunctory review. The detailed studies and considered advice of boards and commissions are often catalysts for innovative programs and improved services.*

*Serving on a board or commission can be a rewarding experience for community service-minded residents. It is an excellent way to participate in the functioning of local government and to make a personal contribution to the improvement of our community. If we are to have government "of the people, by the people and for the people," we must have the continued participation of the many dedicated board and commission members. Making local government effective and responsive is everybody's responsibility.*

*On behalf of the City Council, I wish to thank each board and commission for their service and extend an invitation to all residents of the City to give serious consideration to serving on a citizens' advisory body.*

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## CHAPTER I. INTRODUCTION

### A. CITIZEN PARTICIPATION

Berkeley's system of boards and commissions provides a way for residents who have special experience or interests to participate in the City's decision making process by advising the City Council on numerous issues.

The governmental decision-making process has other citizen participation mechanisms, such as speaking at public hearings, speaking before the City Council and its subcommittees, participating in neighborhood based organizations, petitioning and letter writing.

The City believes it is not only the right but also the duty of citizens to participate in planning for their future, and that the City has a responsibility to provide commissioners with the tools to carry out their charge. That responsibility includes skills training and useful written procedures. This handbook attempts to fulfill the latter requirement.

The board and commission system provides the opportunity to interact creatively with people of all ages, interests and backgrounds. Democracy can be realized when citizens are able to come together across neighborhood and economic lines to assist in making the community decisions that will shape all of their lives. While commissioners are themselves appointed from within the community, it is important that they in turn ensure that a wide variety of viewpoints from the rest of the community are considered when commissions make recommendations to the Council. Commissioners should treat these widely varying viewpoints of other commissioners and members of the public with respect so that all citizens are encouraged to participate in government.

The City of Berkeley enjoys a wide variety of Council-appointed citizen boards, commissions and committees which advise the Council on numerous issues. As citizen participation has evolved into a vital and integral part of local government, the number of commissions<sup>1</sup> has steadily grown so that there are now approximately forty such bodies functioning within the City of Berkeley, not counting the Board of Education or the Rent Stabilization Board, both of which are separately elected and independent of the City Council and which are not within the purview of this Manual.

### B. COMMISSION ORIGINS

Commissions originate from four different sources: the Charter, Council action, vote of the people, and federal or state mandate. In a few instances, the Council appoints citizens to represent Berkeley on regional committees.

<sup>1</sup> Throughout this manual, the word "commission" is used to denote all boards, commissions and committees.



- **Charter**

The present Charter, first adopted in 1909, initially authorized a Personnel Board, a Civic Arts Commission, a Welfare Commission, and a Board of Library Trustees. References to specific commissions, except for the Board of Library Trustees and the Personnel Board, were deleted from the Charter in 1974. The Rent Stabilization Board was added to the Charter as a separately elected body in 1982.

- **Tenure of Commissions**

- Indefinite Tenure

The overwhelming majority of commissions are created to perform defined duties within a sphere of interest for an indefinite period of time by ordinance or resolution. From time to time, the Council, perceiving the need for a new and specialized body, creates a new commission.

- Limited Tenure

From time to time the Council establishes a commission or task force for a specific purpose and a limited period of time. The Council may extend the tenure of a commission.

- **Federal and State Mandate**

Certain commissions are required by federal or state law. In such cases the purposes and duties are specified by federal or state law, and appointments are made either by the City Council or by individual Councilmembers in accordance with the Fair Representation Ordinance, Berkeley Municipal Code §§ 2.04.030 – 2.04.070 and 2.04.080 - 2.04.130.

Examples include: Housing Advisory Commission, Community Health Commission, Human Welfare and Community Action Commission, and the Mental Health Commission.

- **Voter Initiative**

Two bodies derive authority from ordinances resulting from measures adopted by the voters. These are the Fair Campaign Practices Commission and the Police Review Commission. These two commissions are exempt from attendance rules cited in Chapter II but are bound by rules contained in each of their initiative ordinances, the Conflict of Interest program and procedural rules devised to meet State open meeting standards.

- **Miscellaneous**

There are several advisory bodies not usually created by the Council to which the Council may appoint only one or two members. The remainder are appointed by other agencies. Usually these advisory bodies are county-wide or regional in nature. Appointees may be Councilmembers, staff members or citizens. This category includes, but is not limited to: the Mosquito Abatement District Board,



Two-By-Two Committee (City-School), Four-by-Four Committee (City-Rent Board), Alameda County Waste Management Commission, Association of Bay Area Governments, and League of California Cities (East Bay Division). These bodies are not subject to the guidelines in this handbook. Despite the wide variety of sources of authority, all commissions listed above share a common characteristic, which is that some or all members are appointed either by the Mayor, subject to confirmation by the Council, by the Council as a whole, or by each individual council member.

## **C. COMMISSION FUNCTIONS**

Commission activities are varied but generally fall into four categories. Any particular commission may belong to one or more of the types listed below and all boards and commissions belong to the fourth type.

- **Quasi-Judicial**

Certain commissions have the authority to make binding decisions which require or restrict the action of individuals. For example, the Zoning Adjustments Board grants or denies variances and use permits under the Zoning Ordinance. The Housing Advisory Commission may order a structure in violation of the Housing Code to be repaired or demolished. Aggrieved parties have the right to appeal to the City Council. Other commissions with quasi-judicial powers are the Fair Campaign Practices Commission, the Landmarks Preservation Commission, and the Planning Commission. In addition, Zoning Ordinance amendments proposed by the Planning Commission have the force of law without immediate Council confirmation and without a right of appeal.

- **Administrative**

The Board of Library Trustees manages the library and is empowered to appoint, discipline and dismiss Library employees.

- **Advisory to the City Manager**

The Personnel Board conducts hearings on unrepresented employee grievances and makes recommendations to the City Manager, who is the only person authorized to hire, discipline or fire employees. Similarly, the Police Review Commission investigates complaints against police officers and advises the City Manager of its findings.

- **Advisory to Council**

All commissions advise the City Council concerning policies and programs. For example, the Parks and Recreation Commission advises the Council regarding public parks and recreation facilities' needs and programs. The Citizen's Humane Commission makes recommendations to the Council concerning the



care, treatment and control of animals. The Planning Commission prepares recommendations to Council on physical/economic development.

#### **D. ANALYTICAL PROBLEM SOLVING APPROACH**

It is important for those who recommend policy, operational, and other improvements in City government to use an analytical problem solving approach. This pertains not only to commissions, but to staff people, executives and others who wish to seriously improve municipal services. As resources dwindle, systems become more complex, and the public becomes more and more accustomed to the world's highly competitive consumer oriented economy, all municipalities and this city government must adapt. In order to determine priorities, to select the best forms of service and the best methods of providing those services, to provide financial, personnel and technical resources to make those services work effectively, an analytical approach needs to be taken prior to advocacy and mobilization of support. A shorthand approach includes:

- a. What is the problem we are trying to solve, and if we probe deeper, is the apparent problem a symptom or is there really a deeper problem?
- b. What general approaches could be used to solve the problem? Avoid single solution answers.
- c. Of the possible approaches, which is the best one and why?
- d. How will the selected approach or solution work? What personnel, financial, and other resources are necessary to make it work? Where will these come from: If there are insufficient resources, what other equally valued programs or activities should be reduced or eliminated to free up the resources required?
- e. Have all those who will actually have to implement the proposal had input and do they agree?
- f. Does the proposal meet legal requirements and has the City's budget office indicated that the financial part of the proposal is, in fact, feasible and workable.
- g. Can the proposal be proven to work by putting it on a standard schedule for implementation?

If each proposal or recommendation brought to the City Council is thoroughly tested against these criteria, or something like them, much wasted time and effort will be avoided and the Council may be much more likely to approve recommendations rather than sending them back for laborious staff analysis.



## CHAPTER II. SERVING ON A COMMISSION

### A. MEMBERSHIP

#### 1) Application Procedure

Commission appointments are made in most cases by individual Councilmembers and sometimes by the Council as a whole. A comprehensive list of current boards and commissions and the applications to apply are available in the City Clerk Department. This information may also be obtained through the City's website at <http://www.ci.berkeley.ca.us/DepartmentHome.aspx?id=4546>. Completed forms should be returned to the City Clerk. The City Clerk will forward the applications to each member of the City Council. Councilmembers will call applicants in whom they are interested to discuss appointment or other participation opportunities.

#### 2) Appointments

Appointments to most commissions are regulated by BMC §§ 2.04.030 – 2.04.070 and 2.04.080 - 2.04.130 - the Fair Representation Ordinance, a voter initiative adopted in 1975 which requires commissions of nine, or multiples of nine, and which allows each individual Councilmember to make an equal number of appointments. Most commissions created by the Council are governed by the Fair Representation Ordinance.

Commissions that are responsible for appointing members to other commissions must follow the same rules for appointments as council appointees.

After a new commissioner is appointed, the City Clerk Department will mail a packet of important information to the commissioner. If the appointment is made less than two days prior to the first meeting of service, the commissioner must make arrangements to pick up the packet in person, or obtain the materials from the Commission Secretary.

#### 3) Terms of Office

The terms of appointments of most commissioners shall, regardless of the date of appointment, expire on the first day of December each year. Where the date of death, resignation or recall of a Councilmember occurs prior to the regular expiration date of appointees, the terms of appointees of that Councilmember shall expire on the date of death, resignation or recall of that Councilmember. (BMC Section 2.04.075)

Commission members whose terms have expired may continue to serve of their own volition until they are replaced. In such cases, the commissioner retains full voting rights until a new commissioner is appointed. Each vacancy on a commission is to be filled through appointment or reappointment by the



Councilmember to whom the vacancy is credited. In the case of newly elected first-time Councilmembers, the appointee of the newly elected Councilmember shall replace the appointee of the Councilmember from the same Council district who was not re-elected, and the appointee of a newly elected Mayor shall replace the appointee of the outgoing Mayor.

A temporary appointment may not be made to a vacant seat on any board or commission. All appointees to vacant seats are eligible to serve in accordance with provisions of Berkeley Municipal Code Section 2.04.075

Except for the commissions established by initiative, commissioners shall serve not more than eight consecutive years on a commission, notwithstanding interruption of service due to the following: (BMC 3.02.040)

- Absence from the commission due to termination for excessive absences; from missing three consecutive meetings or 50% or more regular meetings in a six-month period (BMC 3.02.020);
- Absence from the commission due to any leave(s) of absence (BMC 3.02.030);
- Absence from the commission due to termination pursuant to the provisions of the City's Conflict of Interest Code, for failure to file the required Statement of Economic Interests, and subsequent re-appointment.

Commissioners that have served the maximum of eight years on a certain commission shall not be eligible to serve on that same commission until a two year break in service has occurred. (BMC 3.02.040)

#### **4) Residency Requirements**

As required by BMC Section 2.04.140, members of commissions appointed by the Council or individual Councilmembers, shall be residents of the City unless the member is required by federal or state law or the ordinance establishing the commission to represent a specified organization, agency, group, category or profession. The secretary of the commission shall report to the City Clerk in writing within one week after receiving notification from a member that he/she is no longer a resident of Berkeley. The termination of the commissioner shall expire on the date the fact is received by the City Clerk. If however, a member states they are temporarily moving out of Berkeley and fully intend to reestablish residency in Berkeley within six months, they may continue to serve on the board or commission. At the end of the six months, the secretary shall report to the City Clerk whether the commissioner has reestablished residency in Berkeley. If the commissioner has not reestablished residency, automatic termination of membership will occur.



## 5) Commissions with Special Regulations

Several commissions require special qualifications for appointment. For example, some appointees to the Mental Health Commission and Community Health Commission must satisfy occupational or specific category requirements under state law.

Other commissions have other terms of appointment, such as the Police Review Commission (BMC 3.32.030) which sets terms of two years, and the Youth Commission (BMC 3.42.030) sets terms of one year. The Fair Campaign Practices Commission (BMC 2.12.175) sets terms the same as the appointing Councilmember or Mayor. Appointments to the Mental Health Commission are made by the Council as a whole for three-year terms. (Resolution No. 57,078-N.S.) If specific rules deviating from the norm concerning appointments and terms exist, these are contained in the BMC sections or resolution which establishes the commission.

## 6) Oath of Office

Before commissioners can participate as voting members of their commissions, they must take the Oath of Office as required by law (City Charter Article V, Section 18), at the City Clerk Department or through their commission secretaries. Failure to take the Oath of Office within thirty days of the date of the appointment letter shall be cause for automatic termination. Secretaries must check with the City Clerk Department prior to the commission meeting to verify that all newly-appointed members have taken the oath.

## 7) Attendance Requirements

The importance of regular attendance at commission meetings as outlined below, cannot be emphasized enough. The failure to comply with these attendance rules and other requirements as outlined in Section II. A.9, can result in automatic termination. It is important to note that all commissions, regardless of the frequency of meetings, are subject to these attendance regulations.

A member must be present at least one hour, or 50% of the entire meeting, whichever is less, to be counted as present for purposes of attendance.

Under certain extreme circumstances, commissioners may teleconference for a commission meeting to avoid being marked absent. Please see Appendix O for the complete policy.

### a. Absence from three consecutive meetings.

If a member has been absent from two consecutive regular meetings, the secretary advises the member that absence from three consecutive regular meetings of the body will result in automatic termination. There is no provision for excused



absences. Within one week of the third consecutive absence, the commission secretary notifies the City Clerk in writing, of the three absences. The appointment expires on the date the fact of the third absence is reported to the City Clerk. Within one week, the City Clerk notifies the commissioner that his/her term has expired and notifies the Councilmember or Council, as appropriate, that a vacancy exists on the commission and that an appointment should be made to fill such vacancy. (BMC 3.02.020)

**b. Reporting commissioner's absence from 50% of all regular meetings.**

The secretary of each commission shall report the full attendance record of each member to the City Clerk at the end of each six-month period (June 30 and December 31) on a form available from the City Clerk. If a commission member has been absent from 50% or more of all regular meetings held within the reporting period, the secretary shall note this on the attendance report, and the appointment of the commissioner shall expire on the date the attendance is reported to the City Clerk. Within one week after receiving such attendance report, the City Clerk shall notify any commissioner whose appointment has been terminated and report to the appointing Councilmember, or Council, that a vacancy exists and that an appointment should be made to fill the vacancy.

In the case of new members who were appointed during the last six-month reporting period, they must have attended more than half of all regular meetings held since being appointed in order not to be considered out of compliance with this attendance rule.

**c. Absence from two consecutive meetings for commissions who meet quarterly.**

Commissions officially authorized to meet only four times per year, shall be exempt from the requirements of 7a. above. Instead, the secretary shall advise any member who has been absent from one regular meeting, that absence from two consecutive regular meetings of the body will result in automatic termination by the same mechanism described in paragraph 7a. above.

In order for a member not to be counted absent from 50% or more of all regular meetings, he or she must have attended more than half of all regular meetings held during the reporting period.

**d. FCPC and PRC exemption from automatic termination due to attendance.**

Because the Fair Campaign Practices Commission was created as a result of an initiative ordinance adopted by the voters, members of this commission are exempt from the automatic termination provision of BMC Section 3.02.020.

The Police Review Commission which was also created by initiative ordinance, provides for termination after three consecutive unexcused absences from regular or special meetings. (BMC 3.32.040)



#### **e. No quorum - meeting canceled**

Where it appears that there will be sufficient members to hold a meeting but at the actual time of the meeting a quorum cannot be assembled and the meeting is canceled, those members who are absent will have an absence counted against them. Commissions may adopt a rule establishing a maximum time those present will wait for a quorum, prior to canceling the meeting.

Commissioners should inform the secretary as far in advance as possible if they cannot attend a meeting. If it is known that a quorum will not be achieved, the secretary should notify all members that the meeting will be canceled. No absence will be recorded against any member.

Per Resolution No. 63,949-N.S., commission secretaries shall submit an information report to the city council whenever a commission cancels two consecutive meetings for lack of quorum.

#### **f. Excused Absences**

To encourage full participation in commission meetings by all commissioners and the public, the Council encourages commissions to refrain from scheduling meetings on cultural and religious holidays. Commissioners may make a written request in advance of a meeting that an absence be excused due to a conflict between a scheduled commission meeting and a religious or cultural holiday. If received prior to the scheduled meeting, the secretary will then excuse the absence and exclude it from the semi-annual attendance report sent to the City Clerk (BMC 3.02.030)

### **8) Leaves of Absence (BMC 3.02.030)**

An appointing Councilmember may grant a leave of absence anywhere from one meeting up to a period not to exceed three months. Notice of the leave of absence must be filed by the Councilmember with the City Clerk prior to the actual absence. In the case of commissioners who are appointed by the Council as a whole, a leave of absence of a period not to exceed three months may be granted by the Council; the secretary shall submit a consent item to the agenda process for Council approval prior to the actual absence.

During the commission member's authorized leave of absence, the commission treats the absence as a vacancy, i.e., the number required for a quorum drops accordingly (see Chapter IV, Section D.3 for details). The appointing Councilmember or the Council may fill such vacancy by a temporary appointment for a period not to exceed the period of the temporary vacancy.

Commissioners may seek to be reinstated prior to the end date of their leave of absence. This request must be made to the appointing councilmember. If this request is granted, the councilmember must submit a written request to the City Clerk to terminate the leave of absence. Once the leave is terminated, the temporary



appointee shall have no further right to serve and the regular commissioner will resume their duties on the commission.

As stated above, a leave of absence may be granted for a period not to exceed three months. A subsequent leave of absence may not be granted to the commissioner if it will extend the total uninterrupted leave beyond three months. The commissioner will be marked absent from any meetings missed beyond the end of the three month maximum leave.

Commissioners appointed to serve on a commission by members of another commission must request any leave of absence from the council as a whole. The request must be submitted through the agenda process by the commission secretary.

## 9) Automatic Terminations

The importance of complying with the requirements of being a commissioner cannot be emphasized enough. Failure to recognize these requirements will result in automatic termination. The following are reasons why members are automatically terminated:

- a. Absence from three consecutive meetings<sup>2</sup> (see Sec. A.7. of this Chapter for details).
- b. Absence from 50% or more of all regular meetings in a six-month period (see Sec. A.7. of this Chapter for details).
- c. The non-filing of required Conflict of Interest Disclosure Statements (see Sec. B.2 of this Chapter for details).
- d. Failure to take the Oath of Office within thirty days of the date of the appointment letter (see Sec A.6 of this Chapter for details).
- e. Non-residency (see Sec. A.4 of this Chapter for details).
- f. Failure to meet any eligibility requirements of the ordinance, resolution or other law establishing the commission or regulating its membership.

If a commissioner is terminated more than four times due to any of the above reasons or a combination of the above reasons, he/she may not be appointed again to any commission for one year. No commissioner shall be appointed to any commission if there are outstanding Conflict of Interest statements or fines; and no commissioner shall be appointed to any commission for a period of one year if terminated from any commission more than once for failure to file such statements.

<sup>2</sup> The members of the Fair Campaign Practices Commission are exempt from this rule. The Police Review Commission provides for termination after three consecutive unexcused absences from regular or special meetings (BMC 3.32.040).



## 10) Resignation Procedure

A commission member wishing to resign shall submit a letter of resignation directly to the City Clerk and to the appointing Councilmember or the Council, as appropriate. The City Clerk should receive the signed original letter of resignation. The resignation may also be submitted via e-mail.

Once submitted, a letter of resignation cannot be withdrawn. The City Clerk shall then notify the Councilmember, or Council, and the secretary of the commission that a vacancy exists.

## 11) Accommodations for Commissioners or Board Members with Disabilities

Commissioners who are disabled are entitled to receive reasonable accommodations on request in order to participate fully in board or commission meetings or activities. Potential accommodations include:

- Sign language interpreters;
- Printed materials in Braille, on tape, or in large print;
- Accessible transportation;
- Assistance in handling papers and documents; and
- Use of the City's Assistive Listening Devices (ALD)

Individuals with disabilities who need accommodations to participate in a City of Berkeley meeting should make their requests to the Disability Compliance Program. The Disability Compliance Program oversees the vendor payment and reimbursement process. Please review Appendix G for more information.

## 12) Stipend Information

In order to remove barriers from citizen participation on commissions, the Council has authorized payment of \$40.00 per meeting, in lieu of actual expenses, to Council-appointed members of commissions whose annual family income as filed jointly for federal income tax purposes is below \$20,000 per year.

Eligibility is determined by the previous year's income. Once established, eligibility continues until such time as the member becomes aware that his/her yearly family income has exceeded or will exceed \$20,000. At such time that member shall immediately notify the secretary of the commission of this fact and request cancellation of eligibility to receive the stipend. When a commission member who was previously ineligible believes that circumstances have changed which will result in the family's current yearly income being below \$20,000, the commission member shall make a certified declaration with the secretary of the commission describing the



general circumstances which have occurred (loss of job, etc.) which will result in the member's eligibility.

Payments to Police Review Commission are different from stipends described above. These payments are covered in B.M.C. Section 3.32.060, which states:

"The Police Review Commission shall be a working commission. In order to compensate commissioners for their time and work in investigating complaints, reviewing policies and practices, and attending meetings, commissioners shall receive three dollars per hour, but in no case shall compensation for any one commissioner exceed two hundred dollars per month. Procedures and regulations for accounting for hours worked and compensation shall be developed and adopted by the commission and filed with the office of City Clerk."

All work of the Police Review Commission is compensated, up to the \$200 cap, at a rate of \$3 per hour. This would include attending subcommittee meetings, investigation time, reviewing documentation, etc.

#### **a. Reimbursement declaration form**

Those commission members desiring to establish eligibility shall file with the secretary of the commission a statement certifying that his/her annual family income for the preceding year meets the eligibility requirements stated above. An eligible member is entitled to receive:

1. \$40.00 for each official meeting attended, not to exceed two meetings each month,
2. reimbursement for actual child care expenses incurred while he/she attends *regular meetings of the full board or commission*,
3. reimbursement for actual expenses paid to an attendant to provide care for a dependent elderly person while he/she attends meetings, and/or
4. reimbursement for actual expenses incurred for disabled support services in order to participate fully in board, commission or committee meetings.

A receipt signed by the person providing such care or support services must accompany each request for reimbursement. Claims for reimbursement shall be filed with the secretary of the commission who shall process the claim according to procedures established by Administrative Regulation 3.2.

#### **b. Annual declaration.**

A new declaration form must be filed annually prior to May 31st in order to maintain eligibility.



**c. Disabled support services.**

Eligible members who are disabled and are seeking reimbursement for support services must also file with the secretary, a statement of the support services he/she requires to participate fully. If the member's needs change, he/she must immediately notify the secretary. Otherwise, the statement certifying the need for support services will continue to be in effect for the duration of the member's term of appointment.

For specific information on reimbursement and the proper forms to use, refer to Administrative Regulation 3.2.

**d. Conditions and Regulations**

(1) Stipends may only be requested for official meetings. An official meeting is a duly noticed meeting with a properly posted agenda that is comprised of the full membership of the board or commission and the meeting must be conducted in accordance with all state and local laws regarding accessibility and participation by the public.

(2) The basic stipend should be paid to an eligible commissioner that attends a meeting that is ultimately cancelled due to lack of quorum. This provision only applies to "official meetings", i.e. those which are duly noticed, properly agendized and intended for attendance by the full board or commission. Also, the meeting must have been expected by the commissioner and secretary to proceed as scheduled. The commissioner(s) and the secretary must be present at the meeting location and wait a reasonable period beyond the meeting start time for the quorum to be met before canceling.

(3) Commission secretaries are to submit quarterly payment forms to the Auditor by the 10th of each month. A separate FN024 form must be submitted individually for each member eligible for the stipend payments. The Auditor shall have final authority to approve or deny claims.

**13) Use of the City Logo and Business Card Policy**

Use of the city logo is restricted to communications generated from a city department. The logo may not be used for other purposes.

The City of Berkeley does not provide business cards for members of appointed boards and commissions.

**B. CONFLICT OF INTEREST PROHIBITED**

Members of Berkeley's commissions provide advice to the City Council, study various civil matters and, in the case of certain commissions, function in a quasi-judicial capacity. Precise relationships vary in that certain quasi-judicial determinations may be appealed to the City Council while others may not. All members of commissions should be aware of the need to avoid any instances of



conflict of interest. Conflict of interest standards are generally applicable to all commissions. Additional requirements may be applicable to particular boards and commissions.

### **1) Influencing the Making of Contracts and Affecting Other Financial Interests**

Section 36 of the Berkeley City Charter directly prohibits the involvement by any City official, elected or otherwise, in any contract, work or business of the City either directly or indirectly. BMC Chapter 3.64 clarifies Section 36 of the Berkeley City Charter as it relates to commissions. The City Charter and BMC Chapter 3.64 prohibit a commissioner from having an interest in any work or business of the City if the commission of which he/she is a member has had any role in influencing the making of the contract. These roles would include reviewing the contract itself, reviewing bid specifications, reviewing requests for proposals, discussing funding of the activity which is the subject of the contract, or making other kinds of policy recommendations which directly affect the making of the contract. A commissioner cannot satisfy the Charter and BMC Chapter 3.64 simply by disqualifying himself/herself when the vote or discussion on the contract is taking place. The law prohibits the contract itself.

However, some exceptions to this rule exist. For example, if the commissioner is an officer, member, director or employee of a nonprofit corporation which is to receive the contract in question, the law does not prohibit the contract itself. The commissioner must disclose his/her interest, the minutes of the commission must reflect this disclosure, and the individual commissioner must disqualify himself/herself from participating in any manner either directly or indirectly in making or influencing any decision related to the contract.

These provisions of the City Charter and B.M.C. Chapter 3.64 are parallel to provisions of State law, Government Code Section 1090 et. seq. (See Appendix C of this Manual).

The State Political Reform Act, Government Code Sections 81000 et. seq., and the Berkeley Conflict of Interest Code adopted pursuant to the Act, prohibit a commissioner from making, participating in making, or attempting to influence the making of any City decision if the commissioner knows or has reason to know that it is reasonably foreseeable that the decision will have a material financial effect on specified interests of the commissioner or a member of the commissioner's family distinguishable from its effect on the public generally. The State Fair Political Practices Commission (FPPC) enforces these procedures and the scope of these prohibitions is delineated in FPPC regulations and advice letters. You may seek the advice of the City Attorney as to whether you should disqualify yourself. However, only a formal advice letter from the FPPC will insulate you from enforcement actions by the FPPC. Be sure to seek the advice of the City Attorney or FPPC well before you are required to participate in a matter which would create a possible conflict of interest.



In addition to filing required disclosure statements described below, any such conflict of interest should be publicly disclosed and noted in the official record of the commission. In such cases it is not sufficient simply to abstain from voting; the positive act of verbal disclosure is required.

## **2) Disclosure Statements Required**

The Government Code of the State of California requires that designated commissions file statements of economic interests in which they disclose specified financial interests. The Berkeley Conflict of Interest Code specifies each commission which is subject to this requirement and the interests which must be disclosed.

If a member of a commission specified in the Code fails to file an Assuming Office Statement of Economic Interests within thirty days after the date of appointment, the commissioner's term shall expire. Similarly, if an Initial or Annual Statement of Economic Interests is not filed within 30 days after the City Clerk has given specific written notice of non-filing, the member's term on the commission shall expire.

If a commission member resigns or is terminated, a "Leaving Office" Statement is required to be filed.

If a member has been terminated from a commission for any reason, and a councilmember wishes to appoint that person again, the member must first file a "Leaving Office" Statement prior to the new appointment. He/she is then required to file another "Assuming Office" Statement within thirty days of the date of the re-appointment date.

Pursuant to the City's Conflict of Interest Code, any commissioner who fails to file any required Statement of Economic Interests within the time specified for such statement will automatically be terminated from the commission. No commissioner shall be appointed to any commission if there are outstanding Conflict of Interest statements or fines; and no commissioner shall be appointed to any commission for a period of one year if terminated from any commission more than once for failure to file such statements.

All commission members affected will be routinely advised of these requirements and deadlines by the City Clerk. Not all commissioners are required to report the same degree of disclosure. The Conflict of Interest Code is designed to require only that degree of disclosure needed to protect the public interest while balancing that need with an individual's right to privacy (Resolution No. 63,843-N.S.).

## **3) Incompatible Public Offices**

The common law doctrine of incompatible public offices prohibits a public official from occupying two public offices which are incompatible in terms of their duties and/or the likelihood of divided loyalties. However, in Berkeley, serving on two or more city boards or commissions, including quasi-judicial bodies, is permitted



(BMC 3.80). If you already occupy an elected or appointed office other than a city board or commission, and you are applying for appointment to a city board or commission, you should seek the City Attorney's advice as to whether the two offices may be deemed incompatible.

#### **4) Incompatible Activities for Compensation**

Government Code Section 1126 prohibits a public official from engaging in activities for compensation which are incompatible with their public office. If you are engaged in compensated activities which may be incompatible with your duties as a commissioner, please consult the City Attorney.

#### **5) State Mandated Ethics Training**

Assembly Bill 1234 passed in 2005 requires all local officials that are compensated for their service or reimbursed for their expenses to complete ethics training on a biennial basis. In Berkeley, the officials that fall under this requirement are listed below.

Mayor and City Council  
Rent Board Commissioners  
Board of Library Trustees  
Human Welfare and Community Action Commissioners  
Police Review Commissioners  
Mental Health Commissioners

These officials will receive a notice from the City Clerk advising them of the required training. The training may be completed on the Fair political Practices Commission web site. The training must be completed within one year of the date of appointment and every two years thereafter. A certification of completion must be filed with the City Clerk. For more information, please contact the City Clerk Department.

### **C. COMMISSION ORGANIZATION**

#### **1) Election of Officers and Term of Office**

Unless otherwise provided by ordinance<sup>3</sup>, the chairperson and vice chairperson are elected by the majority of the commission for a one-year term and hold office until their successors are elected or until their terms as members of the commission expire. No commissioner shall serve as chairperson for more than two consecutive years. The annual election of commission officers should occur during the month of February. The results of the vote should be publicly announced and the vote recorded in the minutes.

<sup>3</sup> Election of Officers to the Police Review Commission, Board of Library Trustees and Landmarks Preservation Commission are regulated by Berkeley Municipal Code Sections 3.32.050 3.04.040, and 3.24.030 respectively.



If an established election schedule has been set for the election of officers, any variation from that schedule results in a vacancy or interim period, not an extended term for the officer. Terms of office for officers are determined by the date the election regularly occurs, not by the date it may have actually occurred.

## **2) Mandatory Annual Training for Officers (Resolution No. 60,531-N.S.)**

Chairpersons and vice chairpersons are required to complete mandatory annual training on: a) the parliamentary procedure of conducting and presiding over meetings according to the Brown Act and City policy; b) the role of the commission and its organization; and c) the commission's relationship to the City Council, the City Manager, the secretary, other commissions, outside agencies, and the general public.

Resolution No. 63,876–N.S. was adopted by council to implement video training for commissioners to satisfy the requirements of Resolution No. 60,531-N.S.

The chairperson or vice chairperson may view, in its entirety, a training video obtained from the City Clerk Department or the training video for this purpose posted on the City Clerk web site. Upon completion, the chairperson or vice chairperson must file with the City Clerk an Affirmation of Completion.

The training video must be viewed and the Affirmation of Completion must be filed with the City Clerk no later than 60 calendar days from the date of election as chairperson or vice chairperson. Failure to complete the video training and file the Affirmation of Completion within 60 days of election will result in the immediate forfeiture of the position of chairperson or vice chairperson.

While not mandatory for commissioners other than the chair and vice-chair, completion of Commissioner Training is encouraged for all commissioners.

## **3) Duties of Officers**

The chairperson, or in her/his absence, the vice chairperson, performs the following duties:

- Presides at all meetings of the commission and ensures that the work of the commission is accomplished. To this end the chairperson must exert sufficient control of the meeting to eliminate irrelevant, repetitious or otherwise unproductive discussion. At the same time the chairperson must ensure that all viewpoints are heard and are considered in a fair and impartial manner.
- Appoints commission members to temporary subcommittees subject to the approval of the commission.
- Approves the agenda prior to distribution.



- Signs correspondence on behalf of the commission.
- Represents the commission before the City Council with the approval of the commission.
- Approves and signs commission reports to Council as prepared by the secretary.
- Performs other duties necessary or customary to the office.

#### **4) Transfer of Chair**

In the absence of the chairperson or his/her inability to act, the vice chairperson presides in place of the chairperson. In the event of the absence or the inability to act of both the chairperson and the vice chairperson, the remaining members elect one of their members to act as temporary chairperson.

If a chairperson or vice chairperson is terminated for any reason, the office is vacated and the rules for transfer would apply. If the officer is reappointed she or he shall not resume the office and must be re-elected to the office by the majority of the membership.

#### **5) Temporary Subcommittees (Resolution No. 61,312-N.S.)**

From time to time the commission or the chairperson, with the confirmation of the commission, may appoint several of its members but fewer than the existing quorum of the present body to serve as a temporary subcommittee. Only commission members may become members of the subcommittee, however, the commission may seek input and advice from the community. Subcommittees must be reviewed annually by the commission to determine if the subcommittee is to continue. Please consult the City Attorney's Brown Act check list and Council resolution attached as an appendix to the Commissioner's Manual for noticing and agenda requirements applicable to subcommittees.

Subcommittees make recommendations only to the parent commission. Subcommittee recommendations must be adopted by the parent commission before they can be forwarded to Council. A subcommittee may not represent the parent commission before the Council or other bodies unless it has first received the authorization of the parent commission to do so.

Subcommittees shall conduct their meetings in public and in accessible locations except where the City Manager has determined that such a meeting would be authorized by law to be held in closed session. Agendas for subcommittee meetings are required by the Brown Act to be posted the same as the agendas for commission meetings. Staff is not required to attend or take minutes at meetings of subcommittees.



## CHAPTER III. COORDINATION WITH COUNCIL, STAFF AND OTHERS

### A. COORDINATION WITH COUNCIL

#### 1) Relationship to Council

All commissions, even those which are quasi-judicial, administrative or advisory to the City Manager also advise the City Council. As the only authorized legislative body of the City, the Council is responsible for accepting, rejecting or modifying commission recommendations. The Council relies on the various commissions to increase the variety of viewpoints and talents brought to bear on City problems. By concentrating on specific areas, commission members expand their expertise and conduct detailed analyses that the Council itself may not have the time to pursue. It is expected that commissions will adopt positions of advocacy within their specific spheres of interest. However, the Council's role is to take into consideration the many varied and sometimes conflicting public needs and render its judgment of what will best serve the public good. The Council must weigh the effect of any given recommendation, not only on the particular area of interest, but on all other City goals and programs.

Just as the commissions advise the City Council concerning policy but do not create policy, so too do the commissions advise the City Council concerning various programs run by the City but do not themselves operate programs. The exceptions to this principle are the Board of Library Trustees and the Berkeley Rent Stabilization Board, which have administrative powers.

It is the responsibility of the City Manager and the City staff to operate programs authorized by the City Council. In a few cases a specific program will be designated by the Council to be sponsored by a specific commission, and even in such instances the administration is the responsibility of City staff.

#### 2) Communications from Council (Resolution No. 61,312-N.S.)

Each commission will be given an opportunity to review and make recommendations on items relevant to its charge. The City staff will notify commissions of relevant items requiring Council action while the item is still in the development stage so as to provide adequate response time.

The Council may also transmit referrals for information or action through the City Clerk who notifies the secretary of the commission. The secretary then notifies the commission. When appropriate, the Council may indicate a desired date for response and specify commissions to be consulted.

Each item presented to the City Council on the action calendar whether generated by City Manager, Councilmembers, or commissions, shall indicate to whom the item has been referred, the date of referral, and any responses.



Each commission may elect to respond by means of a separate communication.

The City Clerk posts City Council agendas, summaries, and the e-Packet, which includes all reports and finalized copies of resolutions and ordinances on the City's website. The City Clerk also provides live captioned webcast and video archives of meetings. The City offers email subscription notification at <http://www.ci.berkeley.ca.us/ContentDisplay.aspx?id=11700> for newly posted Council information. Commissioners who wish to obtain electronic copies of agendas and summaries may subscribe to the City's e-mail subscription service or request agendas and summaries from the Commission Secretary.

### **3) Presenting Agenda Items to Council (Resolution No. 61,312-N.S.)**

A commission transmits its findings, responses to referrals and other communications to the Council through the Council agenda. Upon the direction of a commission, the secretary prepares and submits a completed commission report for the Council agenda directly to the City Clerk no later than three weeks following commission action. The City Clerk will place the report on an upcoming Council agenda based on City Manager timelines and Council Rules of Procedure for scheduling matters on the agenda. If a commission determines that severe detriment will occur by the three-week delay then the commission may request staff submit a report to the City Clerk as soon as possible and request the City Clerk place the matter on the next available Council agenda.

The secretary of the commission is responsible for preparing and submitting the commission report as approved by the Commission and signed by the commission (Chair) or its designee. The City Manager may ask the commission for additional information and/or clarification before placing the report on the agenda.

On rare occasions an advisory commission may be unable to achieve the number of votes needed to take official action. An example would be a commission of nine members, the five members present at the meeting (thus achieving the required quorum) disagree: three voting for a proposal and two against. If time permits the matter would be held until all members were present and a definitive recommendation voted upon. If, however, the matter is time sensitive, the commission could elect to communicate the facts to the Council and indicate those voting for each of the opposing viewpoints. Any commission may communicate the opinion of fewer members than the officially required majority. Nothing in this section shall be construed to prevent the City Manager from reporting what occurred at the commission meeting.

Commissions may submit Consent Calendar items, Reports for Action and Reports for Information for the Council agenda. To be accepted for the agenda, Reports for Action must contain a specific recommendation for Council approval, adoption or authorization. Such recommendations should be clear and spell out who is taking action and what the action will accomplish. The subject matter appropriate for Reports for Information is that which seeks to advise or inform the



Council on a subject but does not request any action or report by the Council. The subject matter appropriate for the Consent Calendar is that which recommends a specific Council action and is routine, non-controversial, easily explained and can be expected to receive Council approval without discussion. A subject which is controversial and complex and can be expected to generate Council discussion should not be transmitted as a Consent Calendar item but as an Action Item.

Each member of a commission shall state his/her reasons for a vote to abstain on any matter including if the abstention was due to a conflict of interest. The commission secretary shall report such reasons in transmitting the action of the commission to the City Council.

This section is only intended to give you an overview of communicating to Council. For more detailed procedures on this subject, see Chapter V. City Council Agenda Process.

#### **4) Completed Commission Work**

It is the commission's responsibility to provide complete, concise and accurate reports to the Council, prepared in such a manner that the City Council fully understands the issue and what action, if any, it is to take. A commission report should include a clear recommendation, the reason for the recommendation, the facts on which it is based, points of disagreement within the commission or with staff, if any, and the minority recommendation, if any. Quality commission reports and recommendations take into account the Council's necessity to view an issue from as wide an angle as possible. The Council must fully understand the relevant background and implications, including costs, of each action it is asked to take. It is the commission's responsibility to provide that requisite information insofar as possible. Submission of quality reports will enable the City Council to act knowledgeably and expeditiously on commission reports and will reduce the likelihood of the Council referring the report back to the commission for clarification. Prior to making a recommendation to the Council, the concerns of all affected stakeholders should be solicited and reported to the Council in the commission report.

Quality reports entail four key procedural aspects:

- Review by other affected commissions prior to submission to the City Council;
- Proper report format and preparation;
- Legal review when appropriate; and
- Realistic funding plans which do not hurt other programs.



## 5) Council Meetings and Agendas

Regular City Council meetings are generally held on the second and fourth Tuesday each month. The schedule is established annually taking into consideration holidays and election dates. Boards and commissions must adhere to City Council rules and regulations governing which meetings are appropriate for submittal of Consent and Action Items. The City Clerk's schedule and Council Rules should be consulted to ensure that the type of report submitted is for a particular Council meeting.

As an early order of business the Council considers the Consent Calendar; however, any contested items removed from the calendar are discussed later in the meeting, or in the case of public hearing meetings, are carried over for discussion to the next regular meeting unless the City Manager requests the matter be heard as a priority.

Following passage of the uncontested Consent Calendar the presiding officer asks if any Councilmember wishes to discuss any of the Reports for Information. Reports for Information designated for discussion by a Councilmember are added to the appropriate section of Reports for Action and carried over as pending business until discussed or withdrawn, or in the case of public hearing meetings, are carried over for discussion at the next regular meeting.

Late items for Council action will be available in the reference binder in the City Clerk Department office and at the Council Chambers at the Council meeting.

The chair or the representative of the commission has the right to address the City Council on matters within their charge at the time their item is heard. They may address Council from the staff table. Each commission may present a majority and minority position. Commission members not delegated to speak as the official representative may utilize the Public Comment period and may be asked questions by Councilmembers.

## B. COORDINATION WITH STAFF

### 1) Duties of Secretary

An employee of the City designated by the City Manager serves as secretary to the commission. The staff secretary represents the City Manager and at the same time, assists the commission in its functions and advises the commission of staff's recommendations. Individuals assigned to serve as secretaries to a commission are there to perform the ministerial and housekeeping functions as outlined below and do not vote. The secretary should inform commissioners about activities, projects and work that is taking place in the organization and among other commissions. In addition to this, as City professionals, they have the responsibility to assure that the commission is apprised of laws and administrative processes affecting proposed policy recommendations and operational recommendations. This will save reprocessing all the good work of these bodies



which serve largely without compensation and which contribute valuable time to the City.

It is a secretary's responsibility to: a) prepare commission agendas and minutes pursuant to the Brown Act and City procedures; b) notify members of meetings; c) maintain an accurate subscription mailing list; d) maintain permanent records of all meetings; e) follow the established Council agenda process and prepare professional and accurate reports to Council based on the commission's action; f) request permission from the City Manager or Department Director, for any requests for extensive staff work or report preparation; g) review minutes and agendas of other commissions; h) report commissioner attendance to the City Clerk; i) file Commissioner's Annual Declaration Reimbursement (stipend) forms with the Auditor; j) obtain clerical assistance when needed; and k) administer the oath to newly appointed commissioners if needed and file completed oath form with the Clerk.

More importantly, the secretaries must at all times consider the policy and fiscal impacts of proposals and provide commissioners with early and timely information about not only the fiscal and policy impact of a proposal in and of itself, but its relationship to overall department and citywide fiscal capacity and priorities. Commission secretaries must be constantly aware of the responsibility to represent overall Council priorities and administrative policies of the City. To this end, all commission secretaries will be required to attend training on such matters. Should secretaries have questions they should see the administrative official to whom they report for advice and consultation. (See A.R. 1.3)

Per Resolution No. 63,949-N.S., commission secretaries shall submit an information report to the City Council whenever a commission cancels two consecutive meetings for lack of quorum.

Documents related to the functions of the commission shall be retained in accordance with the Citywide Records Retention Schedule. Secretaries may also consult with the Records Coordinator in their department for guidance on records retention.

## **2) Relationship Between Secretary and Commission (Reso. No. 61,312-N.S.)**

As previously stated, the secretaries of commissions are City employees appointed by the City Manager. In some instances, a department director who is named as staff secretary delegates this responsibility. While other staff members may assist the commission from time to time, clerical staff will not be assigned to attend meetings without approval of the City Manager. Only the staff secretary's presence is required. Generally, the staff secretary is appointed from the department which most nearly encompasses the commission's activities.



The two main responsibilities of the staff secretary are to: assist the commission in its functions; and to represent the City Manager. As representatives of the

City Manager, the staff secretary also advises the commission of staff's recommendations. In this sense, the secretary is an active participant with the commission, although without a vote, rather than merely a passive transmitter of information.

While the secretary's role is to assist the commission, the secretary and other staff assistants are not employees of the commission. At all times the staff is directly responsible to the department director and to the City Manager. The following are some ways to avoid misunderstandings and to keep the channels of communication open:

- a. All contacts from the commission to any member of the staff other than the secretary, are transmitted through the secretary. Conversely, all contacts from staff to the commission go through the secretary. When an individual commissioner wants to make contact with a higher level employee, i.e., the City Manager, the commissioner should notify the secretary of this contact.
- b. Contacts with staff members should clearly be in the framework of the commission assignment.
- c. Commissioners should not ask for individual reports, favors, or special considerations.
- d. Citizens complaints heard by commissioners should be referred directly to the staff person (secretary) assigned to the commission.
- e. Commissioners should realize that the assigned staff person who works with the commission reports directly to a supervisor and may not be able to carry out every recommendation that the commission may have.

At the same time, the staff secretary has a responsibility to:

- a. Keep the commission informed of the purpose and goals of the organization and suggest methods to accomplish these goals and how to seek out information or resolution of a problem.
- b. Initiate suggestions so that the commission has an idea how to seek out information or resolution of a problem.
- c. Promote the team spirit, so that all commissioners can participate in a manner which will maximize their satisfaction in the organization. Recognizing commissioner contributions and encouraging involvement are two ways to let everyone know that their ideas are welcome.



- d. Take initiative to inform commissioners about activities, projects and work that is taking place elsewhere in the organization and among other commissions.
- e. Present a balanced report on controversial issues, so that both positive and negative aspects can be readily identified.

If a commission desires information or a report which will require an excessive amount of staff time, the commission should request Council permission to pursue the project. The commission should direct the secretary with regard to the urgency of the referral. Following this procedure will prevent staff from being diverted from priority projects.

Reports issued to the Council by the commission and prepared by the secretary should present objectively the commission's recommendation and deliberations, but should also make reference to any disagreement with staff, so as to fully inform the Council of the implications of the report. It is suggested that the secretary maintain a simple report for tracking the status of all referrals to the City Manager and City Council. The report could be updated for each meeting, providing a one-line description of the referral, the date of the referral, when it was transmitted to the Council or City Manager, and what the response was.

All appearances by staff before the commission are scheduled through the secretary so that they may be placed on the agenda. A staff person appearing before, or communicating with, a commission as a private individual advises the commission that he/she is not acting in an official capacity.

Staff secretaries are professionals who are required to provide their best technical and professional advice both to the commission and also to the City Manager. Occasionally this dual role will result in staff opposing a commission recommendation. Commission reports are not subject to modification by the City Manager. However, commission reports that require action must be accompanied by the "City Manager Response Report" and must be completed by the department staff and submitted to the agenda process.

### **3) The Relationship with the City Manager**

The commission secretary should provide the City Manager with copies of each commission report directed to the City Council before the report is submitted to the City Clerk for the agenda process.

The City Manager may include an accompanying report to Council which highlights the nature of any difference and any alternate recommendations in those cases where the City Manager differs with the recommendation of a commission report. Otherwise, the "City Manager" section of the report should state "City Manager concurs/takes no position with the content and recommendations of the commissions report". Please refer to Groupware for agenda report templates.



On an annual basis, the City Manager will solicit the opinion of each commission regarding staff service provided.

## **C. RELATIONS WITH OTHER COMMISSIONS, OUTSIDE AGENCIES AND THE GENERAL PUBLIC**

### **1) Other Commissions**

There are enormous benefits when commissions work together on projects or investigations. Besides the advantages of time and energy savings, commission work can reflect a more accurate blend of community sentiment when efforts are made to coordinate in order to deal with overlapping subject matter.

When one commission recommends an action to the Mayor and Council relating to a sphere of interest of another commission, the other involved commissions are notified and given an opportunity to comment before any reports are forwarded to Council. Referrals for information or review of proposals from one commission to another are transmitted through the respective secretaries of each commission.

In order to develop a useful liaison between commissions, each commission should determine which other bodies regularly deal with overlapping subject matter. Commissions which regularly overlap on each other's activities should request agenda, minutes and relevant reports from each other. Commissions which do not ordinarily relate need not routinely communicate with each other, but where an issue arises which is of concern to both, the two commissions should review the issue with each other before submitting a report to Council.

### **2) Outside Agencies**

From time to time, boards and commissions pass resolutions to send communications directly to outside agencies. Unless specifically authorized by the Council, commissions may not represent policy to outside agencies either on their own behalf or on behalf of the City. Commissions function in an advisory capacity and in the absence of an explicit delegation of the role to act on the City's behalf by the Council on a particular issue, may not directly communicate with outside agencies. If a commission wishes to support or object to a particular policy or program it should frame its action as a motion and a recommendation to the City Council on whose behalf the letter will actually be sent. Supporting or opposing legislation need not take the form of a resolution. Action by Council on such a commission request would be in the form of a letter. However, should a resolution be requested of Council, such resolution would be attached to the Council report (in the proper format), ready for Council action. If a request for an official policy statement is received from an outside jurisdiction, the commission should analyze and study the request. It could then make a recommendation to the Council. Furthermore, commissions may not take any action such as endorsing grant applications, receiving donations and gifts, or approving use of City property, facilities or other resources, which commits or indicates an intention



to commit the City without authorization by the Council and coordination with the City Manager. All communications from and to outside agencies are transmitted through the staff secretary.

### **3) General Public**

The purpose of commission meetings is to permit open discussion on specific topics in a setting that is more informal than a Council meeting, to hear public expression on issues and to inform the public of what the commission is doing. Commissioners have the obligation to consider the welfare of the entire City, to be fair, objective and courteous, and to afford due process to all who come before them.

Public opinion must be sought but no commissioner should permit his/her judgment to become subservient to the criticism of those citizens attending the meetings. In order to conduct its business, the commission has the authority to limit discussion and public participation on any subject (see Requirement to Allow for Public Participation-Chapter IV B.3).

All communications from the commission to members of the public are transmitted through the commission secretary. Similarly, arriving communications are received by the secretary and relayed to the commission through the agenda. The secretary is responsible for acknowledging all communications received.

Secretaries should consult with the administrative official to whom they report for direction on how to address complaints and concerns from residents and members of the public.

### **4) Individual Commissioners**

Unless authorized by the commission, an individual commissioner may not represent the commission before any other commission, outside agency, to the press, or the general public. (See C.2, "Outside Agencies", regarding representing the City before outside agencies.) When an individual commissioner is appearing in a private capacity before other commissions, outside agencies, or the general public, the commissioner must clearly indicate that she/he is speaking as a private individual, not as an official representative. Official city stationery may be used only for official communications authorized by the commission.

Each commissioner also has the obligation to work cooperatively with other commissioners. Commissioners should exercise self-discipline and strive always to be objective, fair and courteous with each other as well as with staff and the public. A healthy respect for the time of other commissioners, staff and the public is of critical importance.



## 5) Press and Other Media

In order to inform the public as much as possible of commission activities, the secretary, with the approval of the commission or the Chairperson, should provide the media with pertinent information as noted below. Press releases should be sent to local media. From time to time, it may be appropriate to provide press releases to other newspapers, radio and television stations.

- a. Notices of Meetings and Agenda - The secretary should routinely send meeting notices and agenda to the media. Copies should be sent to the City Clerk and City Manager. The secretary shall forward the agendas and approved minutes to the City Clerk for posting on the web.
- b. Items of Public Interest and Policy Statements - Information concerning items of particular interest to be discussed at future meetings as well as recent newsworthy actions of the commission should be regularly provided to the media. Press releases which state the City's policy should be cleared through the City Manager's Office prior to release to the press. Copies of all press releases and other notices that are provided to the media, should be sent to the City Manager's Office also.



## CHAPTER IV. COMMISSION PROCEDURES

### A. WORK PROGRAM

#### 1) Development of a Work Program

Many commissions find it effective to establish a yearly work program or statement of goals. A work program is a planning document that specifies how and when the objectives (outcomes) which the commission expects to accomplish during the fiscal year will be achieved. Goal statements explain the nature and scope of the work to be performed and the time needed to accomplish the goal. The nature of the duties of specific commissions may determine which method is most suitable.

Designing yearly work programs or goal statements may be done in conjunction with the development of the relevant departmental work plan so that the department and commission's work will complement each other throughout the year.

### B. MEETINGS

#### 1) Requirement to Meet in Public

The Brown Act (Government Code 54950 et seq.), adopted by the State of California in 1953 and subsequently amended, requires that all meetings of commissions where a majority of commissioners attend, be open and public and grants all persons the right to attend such meetings. The purpose of this legislation is stated in the Brown Act as follows:

54950. In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in the State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberation be conducted openly.

*The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.*

Legal reasons to hold closed sessions are very limited and the occasions when an advisory board/commission could adjourn to a closed session are rare. Specific cases should be cleared with the City Attorney prior to attempting to schedule a closed session. The commission should follow all City guidelines and checklists regarding compliance with the Brown Act and other such laws.



## 2) Requirement to be Accessible to Public

City policy requires that public meetings shall be accessible to persons with disabilities.

### a. Wheelchair Access

All board and commission meetings and meetings of the subcommittees, must be held at wheelchair accessible locations. This includes the approach to the facility, entry, path of travel within the facility, and restrooms. City of Berkeley facilities are continually being upgraded to meet accessibility requirements; secretaries should contact the Disability Programs Manager for recommended locations or for location assessment, if necessary.

### b. Communication access for members of the public with disabilities. (A.R. 1.12)

All boards and commissions must provide communication access in the form of accommodation to members of the public with disabilities so that they may have an equal opportunity to participate in and benefit from board and commission meetings. This particularly affects citizens who are vision or hearing impaired, and may involve requests for such accommodations as providing meeting agendas in large print or Braille, utilizing the City's assistive listening devices, or the provision of a sign language interpreter at the meeting itself.

Upon request, it is the responsibility of the Disability Compliance Program to arrange for this accommodation at no cost to the requesting individual. Although the Communication Access Statement (See E.2 of this Chapter) states that three working days advance notice will ensure accommodation availability, every attempt will be made to arrange accommodation even on short notice. Although primary consideration should go to the disabled individual's preferred type of accommodation, when a particular type of accommodation is not available on short notice, an alternative type of accommodation may be considered. For example, if Braille or large print isn't available on short notice, staff may read the document to the vision-impaired person as an alternative.

Commissioners or board members with disabilities will receive accommodation through the Disability Compliance Program upon request. This is discussed in Chapter II - A.11.

## 3) Requirement to Allow for Public Participation

### a. Comments from the Public

The Brown Act requires that agendas for legislative bodies provide an opportunity for the public to address the body. Consult the City Attorney's checklist and other such City guides for specific requirements and procedures for establishing public comment procedures and time limits,



including time limits for speakers. Commissions can also conduct public hearings on specific subjects.

#### **b. Informal Participation**

The purpose of commission meetings is for commissions to discuss commission business and take action. The commission may limit public comment in a manner consistent with the Brown Act and rules established by the commission.

#### **c. Formal Participation/Presentations**

An individual wishing to formally address the commission or make a presentation should prepare a written request to the secretary to be scheduled on a future agenda. The request is discussed at the next meeting and the commission may grant or deny the request.

### **4) Types of Meetings**

Consult the City Attorney's checklist and the Brown Act for the different types of meetings and their requirements for notice.

#### **a. Regular Meeting**

The Commission shall establish a meeting schedule at the beginning of each year to follow for the next 12 months. The meetings must be scheduled in accordance with the meeting frequency schedule adopted by the City Council and must be noticed and conducted under the rules and regulations of the state and local authority.

#### **b. Public Hearings**

Public hearings are held when required by law or when the commission determines that such a hearing would be desirable. When a hearing is required by law, the procedure for that hearing may also be specified by that law. Most hearings and commission matters are quasi-legislative; the commission is making policy or programmatic recommendations to the City Manager or City Council. Some hearings are quasi-judicial, such as hearings or permits before the Zoning Adjustments Board, Landmarks Preservation Commission, or Housing Advisory Commission. In such quasi-judicial proceedings, special rules apply.

#### **c. Workshops**

Workshops are devices designed to elicit citizen input in an informal manner, allowing maximum interaction between citizens and commissioners or for commissions to work on issues in an in-depth manner. Workshop sessions do not culminate in action at that meeting. Actions or recommendations should be taken at either the next regular meeting or at another publicly



announced date and time. In both cases, the commission, when establishing the time and place for the meeting, should determine the period of time available and establish the portion of time to be devoted to presentations by the public. Secretaries should also keep in mind that all public access and communication access requirements must be met for all public hearings and workshops. (See Sections B.2 and E.2 of this Chapter)

#### **d. Guidelines for Public Hearings and Workshops**

- i) Subject Identification. The subject matter of a public hearing is usually clear, and very often the legal requirements of notice are specified by the law. The subject matter of a workshop may present some difficulty. Thought should be given to the structure of the meeting and any possible result which may flow from the hearing or workshop. The following questions illustrate the kinds of decisions and advance planning which should precede any public hearing or workshop:

- (1) Is the subject matter clearly identified?

- (2) Is the focus of the matter sufficiently sharp so speakers can address the subject in a positive and helpful fashion?

- (3) Will possible action follow immediately, or will action be deferred to another specific date?

- ii) Notice of Hearing. Where a public hearing is mandated by law, the form and timing of the advance notice is most often specified by law. The commission's secretary will handle all such requirements. Most notices are routinely distributed to the media, affected community organizations, affected neighborhood groups, and, depending on the specific subjects, they may also be circulated to affected special interest organizations or individuals.

Certain hearings require, in addition to a mailed notice, a posting in the area affected by subject matter. Again, all legal notice requirements are properly handled by the commission's secretary.

- iii) Notice of Workshops may incorporate any or all of the above elements, depending on the subject matter and subject to budgetary limitations.

- iv) Conduct of Hearing. The procedure to be followed for a public hearing may vary depending, again, on the subject matter and the time available for the hearing. In the instances where a commission acts in quasi-judicial fashion, certain minimum standards of receiving testimony must be met. These would include, but not necessarily be limited to, an introduction of the subject by either the secretary or the



chairperson, testimony from affected parties or interested citizens, or receipt of any pertinent documentation.

The hearing should be formally declared open by the chairperson and should be formally terminated by commission motion. If findings are required as a part of the commission action, such findings should be clearly stated for the record. If any commissioner must abstain from participation due to potential conflict of interest, or has a disclosure of interest which, while it should be made, does not prevent participation, these should be stated at the commencement of the hearing.

- v) Action. Any action resulting from the hearing should be clearly stated in the form of a motion, properly seconded and voted upon. The record should in such cases identify those voting "aye", those voting "no", those abstaining, and those absent.

Action must, of course, be by an affirmative vote of at least a quorum of the commission. This criteria is more specifically discussed in Section D.2 of this Chapter.

Under State law, action is prohibited on any matters which have not been properly noticed. This is more specifically discussed in Section D.1 of this Chapter.

If no action is to be taken at that meeting, the chairperson should announce this fact, and, if possible, advise the public of the date when action may be expected.

- vi) Tape Recording of Hearings. Except for certain quasi-adjudicating hearings, there is no legal requirement that any meeting or public hearing be taped. The secretary will provide a written set of action minutes, which, when adopted by the commission, constitute the legal record.
- vii) Hearing from the Public. At public hearings and workshops, commissions have the responsibility to hear all viewpoints of any subject. In order to ensure that all parties are adequately heard, it is often necessary to establish ground rules. These rules most commonly include:

- (1) Limiting the time of speakers.
- (2) Establishing strict rules regarding rebuttal, if it is decided that rebuttal is permitted.
- (3) Requesting commission members to hold questions to the end of the public presentation portion of the hearing.



- viii) Impartiality and Standards of "Fair Play". Commissions should be aware of the need to maintain basic standards of fair play and impartiality. This awareness must also speak to the need to avoid the appearance of bias. The chairperson has the primary responsibility to ensure that the varying points of view are heard, that the hearing or workshop proceeds in a timely manner, and that the options for future action by the commission are clearly stated. Awareness of the varying interests within the Berkeley community is essential, and the City Council depends on its boards and commissions to provide thoughtful advice based on the fullest possible study of the subject and contact with all relevant segments of the community to obtain their input.

## **5) Teleconferencing**

On December 18, 2007, the City Council approved an official policy governing the circumstances under which a commissioner will be permitted to teleconference and establishing the procedure for obtaining approval for use of teleconferencing.

Teleconferencing may only be used in the case of an extreme, unforeseen health or disability. It may not be used in the case of business or other travel and it requires pre-approval. Please read the policy carefully in Appendix O.

## **C. MEETING PROCEDURES**

### **1) Establishment of Meeting Rules**

Each commission may establish additional rules and limit debate. It is the responsibility of the chairperson to control public debate so that everyone has a chance to speak before others speak for a second time, and to expedite the business at hand. To this end, commissions may establish rules to limit debate.

### **2) Processing of Motions**

When a motion is made and seconded, it should be stated by the maker of the motion and read by the chair prior to debate. If the motion is adopted, the maker's written version of the motion if any, should be given to the secretary for reference in preparation of Council reports and/or the minutes. A motion may not be withdrawn by the mover without the consent of the member seconding it. The chairperson may at any time, by majority consent of the members, permit a member to move a subject out of the regular agenda order.

Motions may usually be adopted by the "no objection" method unless any member prefers voice or roll call vote. There is no legal requirement for roll call voting unless a member demands it. This method of expediting a long agenda is common practice, and any defects are probably cured by the later approval of minutes which should reflect a "no objection" vote as "unanimously carried".



### 3) **Parliamentary Procedure and Robert's Rules of Order**

More detailed information on parliamentary procedure for chairpersons and commissioners as it's applied in Berkeley, precedence of motions and voting procedures is contained in informational materials provided by the City. Parliamentary rules derive from Robert's Rules of Order (adopted by Resolution No. 23,080-N.S.).

### 4) **Order and Decorum**

#### **a. Commission Conduct.**

While the Commission is in session, the members should not interrupt the proceedings or any Commissioner or member of the public who has the floor.

#### **b. Conduct of Public in Attendance.**

Persons attending the meeting should observe the rules and procedures of the Commission and should not disrupt Commission business, for example: by shouting, making disruptive noises, such as boos or hisses; creating or participating in a physical disturbance; speaking out of turn or in violation of the Commission's procedures or rules; preventing or attempting to prevent others who have the floor from speaking; preventing others from observing the meeting; entering into or remaining in an area of the meeting room that is not open to the public; or approaching the Commission without consent. Any message to or contact with any member of the Commission while it is in session should be through the Commission Secretary.

Each person addressing the Commission should first give his/her name and City of residence in an audible tone of voice for the record. All remarks should be addressed to the Commission as a body and not to any specific member. No one other than the Commission and the person having the floor, may enter into any discussion, either directly or through a member of the Commission, without the permission of the Chair. No question may be asked of a Commission member except through the Chair. After being recognized for this purpose by the Chair, any commission member may briefly respond to comments made during the public comment period or may pose a question to the person speaking at public comment or during a public hearing but may not discuss the matter.

Interested persons may address the Commission on any issue concerning City business during the period assigned to Public Comment under Commission procedures. The public may also comment during a public hearing on the subject of the public hearing in accordance with any procedures established by the commission for this purpose. Commissioners may ask questions but the Commission should not discuss or act in connection with such citizen comment, if the subject is not on the agenda for action. A Commissioner may, however, refer a subject to staff or other resources for factual information or for action, if appropriate.



**c. Rules of Debate**

- i. Presiding Officer May Debate. The presiding officer may debate from the chair, subject only to such limitations of debate as are by these rules imposed on all members, and should not be deprived of any of the rights and privileges a member of the Commission by reason of his/her acting as the presiding officer.
- ii. Getting the Floor. Improper references are to be avoided. Every member desiring to speak should address the Chair, and upon recognition by the presiding officer, should confine him/herself to the question under debate.

**d. Interruptions**

A member, once recognized, should not be interrupted when speaking unless it is to call him to order, or as herein otherwise provided. If a member, while speaking, is called to order, he/she should cease speaking until the question of order can be determined, and, if in order, he/she should be permitted to proceed.

**D. COMMISSION AGENDA NOTICE****1) Notice of Meetings**

In order to protect the right of the public to know when meetings are held, adequate notice must be made. In the case of regular meetings whose time and place is set forth in a formal document (bylaws, ordinance, resolution, etc.), the required agenda serves as notice and no additional notice is needed. The agenda must be physically posted 72 hours in advance of the meeting. The agenda posted on the web is helpful to the public, however, it does not satisfy the official noticing requirement.

Special meetings may be called by the chairperson or a majority of commissioners if written notice is received at least twenty-four hours in advance by each member and by any news media which have requested such notice in writing. The notice must contain the time and place of the meeting as well as the business to be transacted. No other business can be considered. Agendas of meetings of the commission and any subcommittee meetings are to be posted on the official City bulletin board, at the meeting location, and are to be posted on the City's website.

If a meeting is cancelled, the notice of cancellation shall be posted at the meeting location and any persons or members of the media on a subscription list should be notified as soon as possible. If the meeting is rescheduled, that item must be acted upon though the commission agenda.



## 2) Cancellation of Meetings

### When the meeting is cancelled prior to the meeting date:

General practice is to post a notice of cancellation, stating that the meeting has been cancelled, at the meeting location. Also, send the cancellation notice to the Commission Inbox for posting. This should be done as soon as you know the meeting will be cancelled.

### When the meeting must be cancelled due to lack of quorum:

When less than a quorum of a body appears at a noticed meeting, the body may either meet as a committee of the parent body or adjourn to a future date pursuant to the provisions of Government Code sections 54955 or 54954.2(b)(3). If no members of the legislative body appear at a noticed meeting, the secretary may adjourn the meeting to a future date and provide notice to members of the legislative body and to the media in accordance with the special meeting notice provisions set forth in Govt. Code section 54956.

### When a meeting is adjourned to a subsequent date:

Notice of the adjournment must be conspicuously posted on or near the door of the place where the meeting was held within 24 hours after the time of the adjournment.

## 3) Polling, Quorum, and Voting

The staff secretary should poll commissioners three days before the meeting to determine if there is a quorum and to communicate this information to the chairperson.

A quorum is the minimum number of commissioners who must be present for the valid transaction of business. In order to take any action, a quorum of commissioners must be present. For the purposes of these guidelines, a quorum means a majority of actual appointees. Thus, if a board has nine actual appointees (out of a potential of nine), five members constitute a quorum. If there are only five appointees (out of a potential of nine), three members constitute a quorum.

The number of affirmative votes needed to pass a motion is the same number which constitutes a quorum - a majority of actual appointees. The City of Berkeley requires a majority of the "membership" rather than a majority of those present at the meeting to take action or pass a motion. This ensures that a majority of those actually appointed to a board endorse the action being taken. If one were to allow a majority of a quorum to take action (instead of a majority of those actually appointed), formal action could be taken by a very low percentage of those actually appointed (e.g., if there were five actual appointments to a nine-member body, a quorum would be three and action could be taken by two appointees).



Occasionally, a particular enabling ordinance or resolution may create a different requirement so the ordinance or resolution establishing the commission should be consulted for particular requirements.

Commissioners that have been granted a leave of absence do not count towards the quorum. Vacancies on the commission also do not count towards the quorum. If a temporary appointee to the commission is absent from a meeting, that absence does count against the quorum.

The following is a chart indicating the numbers needed to take action:

| <b>Total Number of Members</b> | <b>Actual Appointees</b> | <b>Quorum</b> | <b>Votes Needed for Action</b> |
|--------------------------------|--------------------------|---------------|--------------------------------|
| 9                              | 9                        | 5             | 5                              |
| 9                              | 8                        | 5             | 5                              |
| 9                              | 7                        | 4             | 4                              |
| 9                              | 6                        | 4             | 4                              |
| 9                              | 5                        | 3             | 3                              |
| 9                              | 4                        | 3             | 3                              |
| 9                              | 3                        | 2             | 2                              |

An exception is the Police Review Commission, established by Ordinance No. 4644-N.S. (BMC Chapter 3.32), which states that "A majority of the appointed commissioners shall constitute a quorum for the transaction of business, and the affirmative vote of a majority of those present is required to take action."

#### **4) Polling for Special Meetings**

"Polling" members to determine their vote is not permitted because no discussion or testimony is possible. In instances where the Council desires a prompt advisory recommendation and there is no time to consider the Council's request at a regular meeting, a special meeting should be called. If a quorum cannot be assembled for a special meeting, the staff secretary so advises Council and indicates the date that the commission is expected to be able to consider the issue.

### **E. COMMISSION AGENDA**

#### **1) Agenda Titles/Purpose**

The purpose of the agenda is to inform the public regarding the issues to be discussed. It is required by the Brown Act that agenda item titles describe fully



the issue or action to be discussed and/or taken. This requirement, therefore, precludes such agenda titles as "University Avenue Improvements" under NEW BUSINESS, or listing a topic on every meeting agenda to cover the "possibility" of discussion.

In preparing the agenda you should place yourself in the position of a member of the public. You need to ask yourself if you could determine from the agenda title what the commission or board is discussing and what action is being proposed.

For example: "University Avenue Improvements" listed on an agenda by itself does not say anything. An appropriate title might be:

**"Discussion of proposed \$5 million University Avenue Landscaping Improvements and formulation of recommendation to City Council"**

Another example: "Earth Day" listed on an agenda by itself does not say anything. An appropriate title might be:

**"Discussion of Commission participation in Earth Day Parade"**

By using a full explanation in the item title, members of the public who may be in favor or opposed to such an issue would know to be present at the Commission meeting to discuss their views.

## 2) Agenda Format/Headings

Prior to each meeting of the commission, the secretary prepares and distributes an agenda which usually includes, but is not limited to, the following: Roll Call, Public Comment, Approval of Minutes, Public Hearings, Old Business, New Business, (with appropriate description of the item under the headings of Public Hearings, Old and New Business), and Adjournment. The agenda may be

approved by the chairperson prior to distribution. The format of the agenda may be varied to suit the commission's needs, but it shall always include the following as applicable:

- **Communication Access Information (A.R.1.12)**

All agendas must contain the following Communication Access Information:



*"This meeting is being held in a wheelchair accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6346 (V) or 981-7075 (TDD) at least three business days before the meeting date. Please refrain from wearing scented products to this meeting."*



- **Accessibility of Meeting Facilities**

All meeting facilities must be accessible. If, however, the accessible entry or path of travel is other than the main or common entrance or path to the meeting location, such information and directions must be so noted on the agenda.

- **Use of Dates**

Items for which material was included in the past and which are not duplicated again as part of the agenda packet should contain the date of the previous agenda packet for reference.

- **Identification of Written Reports**

Written reports which are to be delivered at the meeting will be identified in the following way: (to be delivered).

- **Oral Reports**

Agenda items for which there will only be an oral report will be identified in the following way: (oral report).

### 3) **Submission of Agenda Reports**

All reports prepared by staff assisting commissions shall be routed through the department director for policy and operational clearance prior to submission for consideration by a relevant commission. In order to meet agenda mailing and duplicating deadlines, documents of one to five pages needing typing must be submitted no fewer than three full working days before mail-out. Special arrangements must be made with the secretary for documents longer than five pages. Only documents requested by the Council or approved by the commission will be typed by the staff. Commission members are responsible for typing any documents they wish to bring to the attention of the commission but which have not been specifically requested by the Council or the full commission. Staff will duplicate such documents for distribution to the commission.

### 4) **Distribution of Agenda Packets**

If all necessary documents are submitted from the commission by the deadlines noted above, the secretary mails complete agenda packets, first-class postage, to commission members no later than seven days before the meeting. All written communications sent to commissions shall be distributed to all members in the packet or at the next meeting.

Complete agenda packets shall be available at the meeting for public perusal and at the Main Reference Library. Any late items shall also be included in the packet for public perusal at the meeting and the packet maintained at the Library.

An agenda without supporting materials may be distributed to other commissions or City departments whose area of interest is complementary or whose work



directly impinges on the subject to be discussed. The secretary distributes the agenda to appropriate local media. In addition, the agenda is sent to the City Clerk and a copy is posted on the City's Official Bulletin Board. Commission agendas are also posted on the City's Website: <http://www.cityofberkeley.info>.

Secretaries shall provide new commissioners with an orientation packet of agendas, action reports, and minutes for the previous six-month period.

### **5) Subscription Service Fee**

The secretary shall maintain a list of all persons requesting a subscription for the agendas of any commission. The cost for reproducing and mailing agendas is established by administrative regulation of the City Manager.

### **6) Late Communications to the Commission**

All writings or documents which are related to any item on an agenda and which are distributed to a majority of the commission within 72 hours of a regular meeting of the commission must be made available for public inspection at the time the subject writing or document is distributed to a majority of the commission at a designated location identified on the agenda. These late communications should also be posted on the commission web site.

## **F. MINUTES**

### **1) Action Minutes**

The secretary shall keep an accurate record of the commission's proceedings and transactions. The provision of a stenographer to take minutes is not possible. The secretary shall provide action minutes similar to those provided to the Council by the City Clerk. Action minutes list the date, time, and place of the meetings, the members and staff in attendance, the members absent, and a clear and concise description of actions taken. Approved motions are indicated by "moved, seconded, and carried," and include a breakdown of the vote. The vote breakdown includes the members voting yes, no, abstain and absent. Reasons for making a motion, debate, and audience reaction will generally not be included.

In quasi-judicial proceedings more detailed minutes are needed which summarize debate, list findings, and note testimony offered by appellant, witnesses, etc. Public hearings may require more specific and complete minutes, depending on the nature of the hearing. In the case of public hearings, a tally is made of speakers for or against and a summary of their views is provided, if possible.

Minutes are presented to the commission for approval at the next regular meeting. The commission may by motion make such correction as conforms to fact. Corrected minutes shall be included in the agenda packet at the next regular meeting. It is the responsibility of the commission secretary to retain the official signed copies of minutes in accordance with the City's Records Retention Schedule.



Members not present at a meeting may vote on the approval of minutes from the meeting at which they were absent if they believe they are informed and able to consider the item.

## **2) Taping Meetings**

It is desirable to tape record meetings when resources permit; but it is not required. However, if a commission decides to tape record their meetings, all meetings should consistently be taped on a regular basis without fail. Tapes must be maintained in accordance with the City's Records Retention Schedule.

## **3) Distribution**

Minutes may be distributed to other commissions or City departments whose area of interest is complementary or whose work directly impinges on the subject to be discussed. Minutes must be sent to the City Clerk for posting on the City's website.

## **4) Subscription Service Fee**

The secretary shall maintain a list of all persons requesting a subscription for the minutes of any commission. The cost for reproducing and mailing minutes is established by administrative regulation of the City Manager.

# **G. OFFICIAL COMMISSION RECORDS**

All agendas, minutes, reports, communications, tapes (if retained), and any other related material, should be kept in an organized manner and in such a way that these records can be easily transferred to another staff person in the event of a change in duties or termination with the City.

**It is the responsibility of the secretary to maintain all commission records pursuant to the City's Records Retention Schedule and other policies.**



## CHAPTER V. CITY COUNCIL AGENDA PROCESS

### A. PURPOSE

The Brown Act, as stated in section 54954.2 of the Government Code, defines the agenda and how it is used to govern the legislative process. It describes the requirements for agendas and how the agenda is used to ensure full participation by the public. The provisions of section 54954.2 are summarized below.

#### 1) Notice

At least 72 hours before a regular meeting, an agenda shall be posted containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session.

#### 2) Posting

The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public.

#### 3) Accessibility

If requested, the agenda shall be made available in appropriate alternative formats to persons with a disability. The agenda shall include information regarding how, to whom, and when a request for disability related modification or accommodation, including auxiliary aids or services may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting.

#### 4) Conduct of Meetings

No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a legislative body or its staff may briefly respond to statements made or questions posed by persons during public comment. In addition, on their own initiative or in response to questions posed by the public, a member of a legislative body or its staff may ask a question for clarification, make a brief announcement, or make a brief report on his or her own activities.

Furthermore, a member of a legislative body, or the body itself, subject to rules or procedures of the legislative body, may provide a reference to staff or other resources for factual information, request staff to report back to the body at a subsequent meeting concerning any matter, or take action to direct staff to place a matter of business on a future agenda.

The legislative body may take action on items of business not appearing on the posted agenda under certain specified conditions.



## **B. AGENDA PROCESS (A.R. 5.1)**

Regular meetings of the Council are generally held on the second and fourth Tuesday of each month. Each year the Council adopts a schedule establishing the specific dates of all meetings and recess periods. The agenda schedule is structured to provide the City Council with copies of their "agenda packet" the week prior to the Council meeting. This allows Councilmembers time to review the agenda material in order to ask questions of staff prior to the meeting. Commissions submit reports directly to the City Clerk. However, secretaries of commissions also have a responsibility of alerting their department directors and the City Manager when appropriate, of policy or budget issues revised by proposed commission actions. To the extent that the City Manager may oppose such actions, those views and their basis should be explained to the commission before it acts, whenever possible.

The City Clerk is the coordinator for the agenda process. The City Clerk routes commission reports and the accompanying City Manager report to reviewers in the City Manager and City Attorney departments, who may request modifications to the City Manager report that accompanies each commission report because of policy or legal issues and/or financial implications. From time to time a commission may be requested to clarify some portion of its report. This request may be prompted by the need to coordinate agenda reports on a particular item to provide the Council with comprehensive information from the City Manager and/or other commissions. Suggested additions or clarifications may provide the Council with a more complete recommendation and thus facilitate action.

## **C. AGENDA SCHEDULE**

Coordinating, organizing and assembling the large volume of information and reports which comprise the "agenda packet" is a complex task. The City Manager establishes an agenda schedule setting forth the various deadlines for submittal of agenda items based on meeting dates of the Council Agenda Committee and the City Council. Contact the City Clerk Department and refer to Administrative Regulation 5.1 for details on the timeline and process.

## **D. COMMISSION REPORTS TO COUNCIL**

### **1) Method of Communication**

A commission transmits its findings, responds to referrals and other communications to the City Council through various categories of reports on the City Council agenda. Those categories include:

Consent Items

Action Items

Information Items



## 2) Secretary's Timeline (Resolution No. 61,312-N.S.)

Upon direction of the commission, the secretary prepares a report and submits the item for the Council agenda. Commission reports are to be approved by the commission chair or its designee prior to submittal. The secretary should complete the report and submit it through the department director to the City Clerk no later than three weeks following commission action. The City Clerk will place the report on an upcoming Council agenda based on City Manager timelines as stated in A.R. 5.1.

## 3) Votes Needed to Take Action

On rare occasions a commission may be unable to achieve the number of votes needed to take official action. An example would be a Commission of nine members, with five members present at the meeting (fulfilling the required quorum) where there are three votes in favor of a proposal and two votes against it. If time permits, the matter should be held until sufficient members are present so that a definitive recommendation can be achieved. If, however, the matter is time sensitive, the Commission could elect to communicate to the Council that the Commission was unable to take action. The City Manager can also so advise the Council.

## 4) Complete, Concise and Accurate Reports

It is the responsibility of the commission to provide complete, concise and accurate reports to the City Council. The reports should be prepared in such a manner that the City Council fully understands the issue and what action, if any, it is being requested to take. (The vote should be included in any case, listing those voting for, against, abstaining, and those who are absent.)

There is an accepted and specific report format for each type of report shown on the following pages. In general, however, Commission reports should include:

- Clear recommendation.
- The reason for the recommendation.
- The facts on which it is based.
- Points of disagreement within the Commission or with staff, if any.
- The required Resolution or Ordinance, in proper format.

## 5) Quality Reports

Quality commission reports take into account:

- The Council's necessity to view an issue from as wide an angle as possible, including the views of affected sectors in the community, fully



understanding the relevant background and implications, including the costs of each action it is asked to take, and the staff concerns, if any.

- The need for the Council to have complete information from which to act knowledgeably and expeditiously, reducing the likelihood of the Council referring the report back to the Commission for clarification.
- The City Manager's likely concerns regarding the recommendation.
- Review by other affected commissions prior to submission to the Council.
- Proper report format (refer to Groupware for current agenda templates).

## **6) Review by Other Commissions**

Often the spheres of interest of various commissions overlap, depending on the specific issue. Before a commission recommends action on an issue, it invites other commissions with an interest in the topic to review the subject and offer a response, whether or not the Council specifically requested such coordination.

For example, if the Parks and Recreation Commission is planning to recommend construction of a playground area at the Marina, it should involve the Waterfront Commission and the Planning Commission. If the Commission on Aging is planning to recommend the funding of a health care clinic for seniors, it should refer the proposal to the Community Health Commission and the Mental Health Commission. If a referral to another commission has been made, the commission writing the report indicates at the beginning of the report the fact that it made a referral and what the response to the referral was, if any.

The review process is described below:

- Commission A develops draft report, and refers draft report to
- Commission B and others as necessary who review and submit comments to
- Commission A which incorporates comments, revises report as necessary to send to Council

## **E. REPORT FORMAT/ROUTING**

The format requirements for reports to the Council are the same for commissions as for staff. It is the secretary's responsibility to follow format requirements when finalizing a commission report. Format templates and examples are posted on the Intranet under Groupware. The secretary should be alert to the need to refer draft reports to appropriate commission(s) prior to submission of final reports to the Council.



Commission reports may be considered incomplete in one or more of the following instances:

- When the report has not been reviewed by another commission(s) whose review is essential if the Council is to make an informed decision;
- When improper format has been used;
- When the recommendation or implications of the recommendation are unclear because of inadequate information;
- When the staff report has not been included with the agenda submission.

***Incomplete agenda reports will not be accepted.***

## **F. DISTRIBUTION WITH COUNCIL AGENDA PACKET**

### **1) Distribution with the Agenda Packet**

Reports received by the City Clerk by the established deadline that are ready for inclusion in the Council packet will be copied and distributed by the City Clerk with all other agenda materials.

### **2) "To Be Delivered" or Supplemental Items**

If a commission report is listed on the agenda as "to be delivered" and it is not provided to the City Clerk by the time the agenda packet goes to duplicating, the staff secretary must complete the "to be delivered cover sheet" (available through the Intranet under Groupware /City Clerk Department) and obtain the City Manager's signature on both the cover sheet and the staff report. The staff secretary is then responsible for distribution of copies to the City Council, City Clerk and other appropriate staff identified on the checklist on the coversheet. Detailed instructions are available through the Intranet under Groupware /City Clerk or the Agenda Unit of the City Clerk Department.

If the commission desires to provide the Council with supplemental information regarding an item already listed on the agenda after the agenda has been published and distributed, the staff secretary must complete the "supplemental information cover sheet" (available through the Intranet under Groupware /City Clerk Department) The staff secretary is then responsible for distribution of copies to the City Council, City Clerk and other appropriate staff identified on the checklist on the coversheet. Detailed instructions are available through the Intranet under Groupware /City Clerk or the Agenda Unit of the City Clerk Department.

Because it is difficult for the Council to review information given to them at the meeting, commissions are urged, when possible, to follow agenda submittal



timelines so that the Council and the public will have sufficient time to review all information presented to the Council prior to the meeting.

## **G. RESOLUTIONS/ORDINANCES ACCOMPANYING REPORTS**

From time to time a commission may present a resolution or an ordinance to the Council for action or information.

Most actions taken by the Council do not require a resolution. When a resolution is absolutely necessary and required for legal or financial reasons, commission secretaries should contact the City Clerk so that the appropriate document can be presented in conjunction with a commission's report. The following guidelines should be followed:

- a. Contact the City Clerk in advance of preparation of a resolution to ensure that the resolution language meets established standards. This step will ultimately save a considerable amount of time and a great many corrections.
- b. All resolutions should follow the format provided in City Clerk Department templates posted on the Intranet under Groupware / City Clerk.
- c. If a resolution or ordinance is being amended, the number of the resolution or ordinance to be amended is that of the original resolution or ordinance, not that of the most recent amendment (however, you can use the latest amendment as a sample to guide you in preparing another amendment). In addition, both the underline/strikeout version, and a final version of the amended resolution or ordinance without the strikeouts/underlines, shall be attached to the report.
- d. If the Commission is proposing to amend a resolution or ordinance, the proposed amending resolution or ordinance attached to the report must also include a copy of the resolution or ordinance being amended.
- e. If the Commission is proposing an ordinance for adoption that will be codified in the Berkeley Municipal Code, they must follow the formatting procedures provided by the City Clerk Department on the Intranet under Groupware / City Clerk. In addition, it is recommended that the ordinance be forwarded to the City Attorney and City Clerk for review prior to submitting the final report to the City Clerk for the agenda process.
- f. Resolutions and ordinances must be carefully proof-read for accuracy.
- g. Electronic copies of resolutions and/or ordinances to be considered for adoption by the City Council must be forwarded to the Agenda Unit via E-Mail to "Agenda".

Commission reports recommending that the City Manager or City Clerk write letters, must be provided to the City Clerk prior to the Council meeting, with the names and addresses of the contact people named in the recommendation.



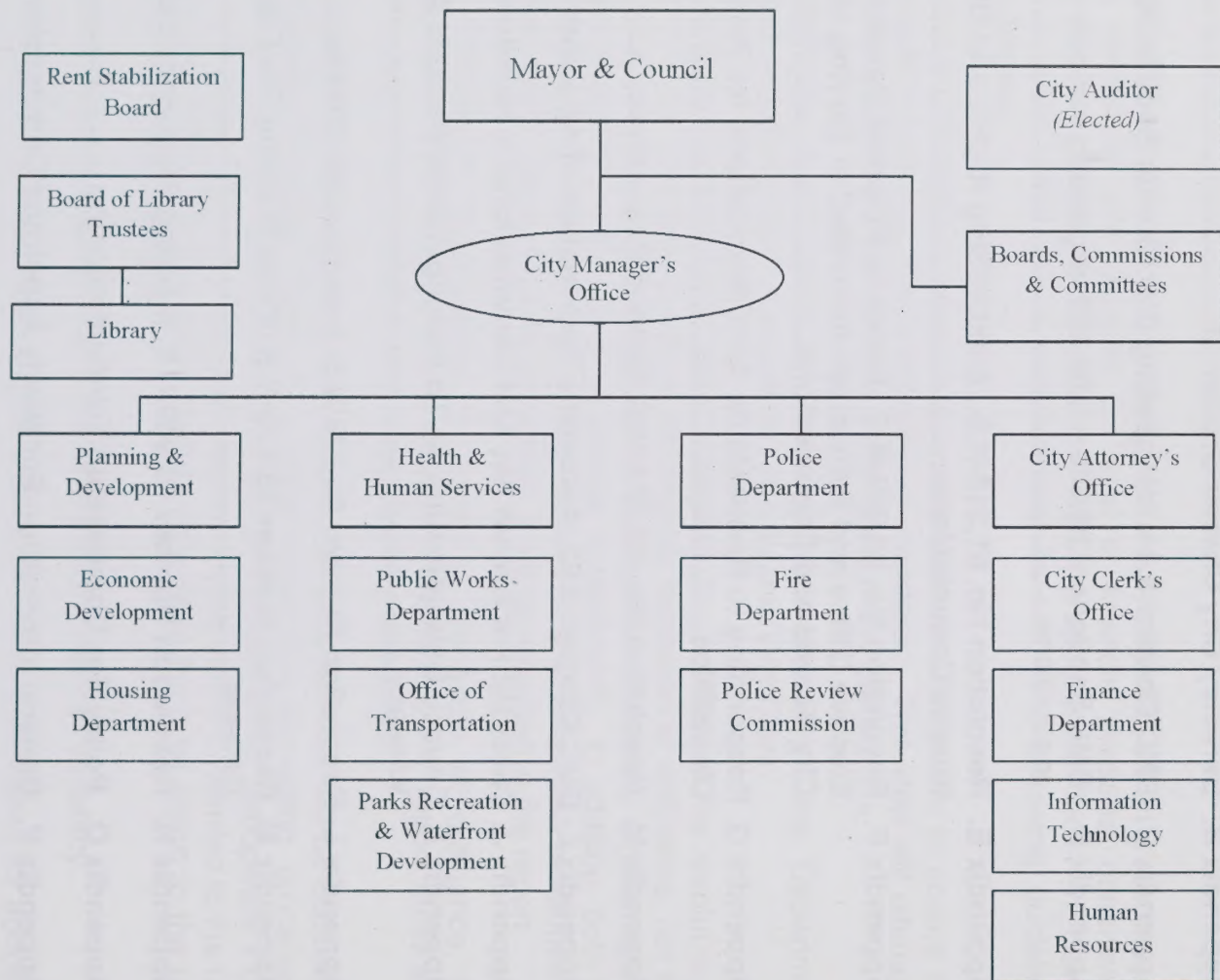
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## Appendix A. Berkeley Municipal Organization Chart

## ORGANIZATIONAL CHART





## Appendix B. Berkeley City Charter Section 36

### Charter of The City of Berkeley

#### Section 36. Officers not to be interested in contracts or franchises.

No officer or employee shall be directly or indirectly interested in any contract, work or business of the City, or in the sale of any article, the expense, price or consideration of which is paid for from the treasury or by assessment levied by any act or ordinance; nor in the purchase or lease of any real estate or other property belonging to the City or which shall be sold for taxes or assessments or by virtue of legal process at the suit of the City. No officer shall be in the employ of any public service corporation in the City or of any person having any contract with the City or of any grantee of a franchise granted by the City.

Provided, however, the prohibitions in this Section contained shall not apply to the following:

- (a) Members of advisory Boards, Commissions, or Committees of the City, who serve without salary or other compensation; provided, however members of Boards, Commissions or Committees which perform functions other than advisory functions shall not be included within this exception.
- (b) Officers or employees of the State of California or of any department, division, or constitutionally created agency thereof.

Any contract or agreement made in contravention of this Section shall be void.

Any violation of the provisions of this Section shall be deemed a misdemeanor.

The Council shall enforce the provisions of this Section by appropriate legislation.



## **Appendix C. BMC Chapter 3.64, Interpreting City Charter Section 36**

### **Chapter 3.64**

#### **INTERPRETING CITY CHARTER SECTION 36 CONCERNING MEMBERSHIP ON BOARDS AND COMMISSIONS**

##### **Sections:**

- 3.64.010 Findings.**
- 3.64.020 Definitions.**
- 3.64.030 Contract, work or business  
of City--Prohibitions.**
- 3.64.040 Chapter declaratory of  
existing law.**

##### **3.64.010 Findings.**

A. For many years the Berkeley City Council has relied on an extensive system of advisory boards and commissions in the formulation of public policy, and approximately thirty commissions, with more than two hundred fifty members meet on a regular basis to reflect and express a broad spectrum of citizen opinion on civic issues.

B. The City benefits from this network of democratic participation because it provides a structured setting within which the viewpoints and experience of citizens can supplement the technical expertise of City staff professionals. In addition this system allows the City to benefit from the wide variety of experience and specialized knowledge of selected citizens--in Berkeley, often at the cutting edge of their fields--that are sources of innovation and sensitive response to public needs.

C. The citizens on Berkeley's boards and commissions serve out of the desire to discharge civic responsibility. They are not (with the exception of the Police Review Commission and the Rent Stabilization Board) paid for their services and, in most cases, are not reimbursed for expenses they incur.

D. A commissioners' responsibilities are substantial, and entail a significant expenditure of time. Often, they are called upon to make difficult judgments and arrive at unpopular conclusions.

E. For this system of democratic participation to continue to function effectively, it is essential that citizens who volunteer their services to the City not incur unwarranted personal risk as they participate on boards and commissions.

F. Charter Section 36 prohibits an officer from being directly or indirectly interested in any contract, work, or business of the City. Although this section exempts members of advisory boards, commissions, or committees who serve without salary or other compensation, members of boards, commissions, or committees which perform functions other than advisory functions are subject to this prohibition.

G. Conflict of interest legal issues, especially those raised under the City Charter Section 36, are extremely complex, turn on subtle nuances of fact, and the legal terms used often have meanings different from their common sense construction.

H. The ambiguities in Section 36 deter many qualified citizens from serving as commissioners for fear that they may inadvertently violate the Charter.

I. There is therefore a need to clarify the provisions of the City Charter and to balance the City's interests in preventing the use of public office for private gain against the City's need for diverse community representation on its boards and commissions.

J. City Charter Section 36 (b) authorizes the council to enact appropriate legislation to implement the provisions of City Charter Section 36 and Charter Section 118 authorizes the council to enact legislation which may be necessary and proper to carry out any of the provisions of the Charter.

K. Enactment of legislation clarifying and implementing Section 36 is necessary and proper for the reasons set forth above. (Ord. 5694-NS § 1, 1985)



**3.64.020 Definitions.**

For purposes of determining whether a member of a board and commission has a prohibited interest in a contract, work or business of the City within the meaning of Charter Section 36 and this chapter, the following definitions shall apply:

A. "Advisory board" or "commission." All boards and commissions of the City shall be deemed advisory except in instances when the board or commission is performing other than an advisory function as defined in subsection B below.

B. "Performance of other than advisory functions." A board or commission will be deemed to perform other than an advisory function and to be subject to this chapter and Section 36 only with respect to any contract, work or business of the City, the making or securing of which is influenced either directly or indirectly by the board or commission. A board or commission directly or indirectly influences the making or securing of a contract, work or business of the City whenever it engages in actions, including but not limited to, formally or informally reviewing a contract, reviewing a bid specification or request for proposal, discussing funding of an activity, discussing priorities for funding, or making general policy, implementation of which results in the making or securing of a contract, work or business for the City.

C. "Interested; Exclusions." A City employee or member of a board or commission shall not be deemed to be "interested" in a contract, work or business of the City if his or her relationship with the contracting party or entity constitutes a "remote interest" within the meaning of Government Code Sections 1091 and 1091.5, the fact of such interest is disclosed to the department, board or commission of which he or she is a member and noted in its official records, and the employee or member with such interest disqualifies himself or herself from participating in any manner, either directly or indirectly, in making or influencing any decision related to the contract, work or business of the City in which

he or she has a remote interest. (Ord. 5694-NS § 2, 1985)

**3.64.030 Contract, work or business of City--Prohibitions.**

No member of a board or commission shall be directly or indirectly interested in any contract, work or business of the City as defined in Section 3.64.020C herein if the board or commission of which he or she is a member has performed other than advisory functions as defined in Section 3.64.020B herein, with respect to such contract, work, or business of the City. (Ord. 5694-NS § 3, 1985)

**3.64.040 Chapter declaratory of existing law.**

This chapter is declaratory of and does not constitute any change in existing law. (Ord. 5694-NS § 4, 1985)



## **Appendix D. BMC Sections 2.04.030 – 2.04.140, regarding various rules and regulations**

### **2.04.030 Sections 2.04.030 through 2.04.130--Purpose.**

The purpose of Sections 2.04.030 through 2.04.130 is to give all nine elected members of the City Council an equal share in the responsibility of making Berkeley's appointed boards, commissions and committees representative of the entire Berkeley community so as to provide for the widest possible community participation. (Ord. 4780-NS § 1, 1975)

### **2.04.040 Applicability of provisions.**

Sections 2.04.030 through 2.04.130 shall be applicable as follows:

A. Present Boards, Commissions, and Committees.

1. Sections 2.04.030 through 2.04.130 shall apply to the following boards, commissions and committees presently appointed by the City Council:

2. The Advisory Committee for the Local Transit Study (City of Berkeley representatives only); the Board of Adjustments; the Board of Appeals; the Citizens Humane Commission; the Civic Arts Commission; the Code Review and Study Committee; the Commission on Aging; the Community Health Advisory Committee; the Housing Advisory and Appeals Board; the Human Relations and Welfare Commission; the Personnel Board; the Planning Commission; the Recreation Commission; the Solid Waste Management Commission; the Waterfront Advisory Board (City Council appointees only).

B. Additional Boards, Commissions and Committees.

1. Sections 2.04.030 through 2.04.130 shall apply to all additional boards, commissions and committees created and appointed by the City Council after December 1, 1973.

2. Section 2.04.030 through 2.04.130 shall not apply to those additional governmental bodies created independently of the Berkeley

City Council where the assigned number of Berkeley City Council appointees is fixed by law at a figure less than nine. Where the number of City Council appointees to such bodies is nine or more, each councilmember shall make an equal number of appointments and the remaining appointees shall be chosen by majority vote.

C. Council Committees. Sections 2.04.030 through 2.04.130 shall not apply to the appointment of council members to council committees. (Ord. 4780-NS § 2, 1975)

### **2.04.050 Number of members to be established.**

Within one month after April 15, 1975, the City Council shall establish the size of all the then existing boards, commissions and committees covered by Sections 2.04.030 through 2.04.130. The size of each board, commission and committee shall be established as a multiple of nine so that an equal number of appointments may be made by each member of the City Council. The council may at any time change the size of boards, commissions and committees covered by Sections 2.04.030 through 2.04.130 to a different multiple of nine. (Ord. 4780-NS § 3, 1975)

### **2.04.060 Appointments--Time when made.**

Within four months after April 15, 1975, each City Councilmember shall appoint an equal number of persons to each board, commission and committee covered by the ordinance codified herein. (Ord. 4780-NS § 4, 1975)

### **2.04.070 Appointments—Term and expiration.**

The terms of persons appointed to boards, commissions and committees under Sections 2.04.030 through 2.04.130 shall expire no later than the same date as the expiration of the term of the councilmember who appointed them. The council may provide for shorter terms.

The death, resignation or recall of a councilmember shall cause the terms of such



councilmember's appointees to expire. All members of boards, commissions and committees appointed under Sections 2.04.030 through 2.04.130 whose terms expire shall serve until their successors are appointed, except in the case of automatic termination for absence. Each vacancy on a board, commission or committee is to be filled through appointment or reappointment by the councilmember to whom the vacancy is credited. Sections 2.04.030 through 2.04.130 shall not affect limitations set by the council on the number of terms persons may serve. (Ord. 4780-NS § 5, 1975)

be those persons appointed according to the provisions of the ordinance codified herein. The terms of those persons appointed to boards, commissions and committees according to the provisions of Section 2.04.050 through 2.04.070 shall commence four months after April 15, 1975. (Ord. 4780-NS § 6, 1975)

#### **2.04.075      Appointments--Specific term.**

Except as provided in this section, the terms of all persons appointed by the City Council to boards, commissions and committees pursuant to Berkeley Municipal Code Sections 2.04.030 through 2.04.130 (hereinafter "commissioners") shall, regardless of the date of appointment, regularly expire on the first day of December of each year.

Notwithstanding the above, where the death, resignation, or recall of a councilmember occurs prior to the regular expiration date of appointees as provided herein, the terms of appointees of that councilmember shall expire on the date of death, resignation, or recall of that councilmember. (Ord. 6395-NS § 1, 1997)

#### **2.04.080      Present membership-- Reappointment or termination when.**

The present members of boards, commissions and committees may be reappointed under Sections 2.04.030 through 2.04.130. If not reappointed, the terms of all persons serving on boards, commissions, and committees covered in Section 2.04.040 who were appointed prior to the effective date of the ordinance codified herein shall terminate four months after April 15, 1975. At such time, the only council-appointed members of boards, commissions and committees covered in Section 2.04.040 shall



**2.04.090 Quorum.**

The quorum for all boards, commissions and committees covered by Sections 2.04.030 through 2.04.130 shall be a majority of those persons appointed in accordance with the ordinance codified herein. All boards, commissions and committees may take action if a quorum is present. (Ord. 4780-NS § 7, 1975)

**2.04.100 Future boards, commissions and committees--Composition.**

All future boards, commissions and committees created and appointed by the City Council after April 15, 1975, shall be composed of an equal number of persons appointed by each member of the City Council according to the provisions of Section 2.04.070. (Ord. 4780-NS § 8, 1975)

**2.04.110 Abolition not prohibited.**

Nothing in Sections 2.04.030 through 2.04.130 shall prohibit the City Council from abolishing boards, commissions and committees described in Section 2.04.040, enlarging or reducing their responsibilities, or combining their functions. (Ord. 4780-NS § 9, 1975)

**2.04.120 Sections 2.04.030 through 2.04.130--Conflicts with other provisions.**

It is not the purpose of the ordinance codified herein to amend or repeal the ordinances and resolutions establishing the boards, commissions and committees described in Section 2.04.030, except insofar as their provisions are in conflict with Sections 2.04.030 through 2.04.130. Where there is no conflict, those ordinances and resolutions shall continue to apply. Wherever there is a conflict between Sections 2.04.030 through 2.04.130 and one of those ordinances or resolutions, Sections 2.04.030 through 2.04.130 shall apply. (Ord. 4780-NS § 10, 1975)

**2.04.130 Sections 2.04.030 through 2.04.130--Liberal construction.**

Sections 2.04.030 through 2.04.130 shall be liberally construed and interpreted as to scope and coverage in order to effectuate the intent that each member of the City Council shall make an equal number of appointments to Berkeley's boards, commissions and committees. (Ord. 4780-NS § 11, 1975)

**2.04.140 Residency requirements.**

Members of boards, commissions, and committees appointed by the council or individual council members, shall be residents of the City unless the member is required by federal or state law or the ordinance or resolution establishing the board, commission or committee to represent a specified organization, agency, group, category or profession. The term of any member of a board, commission, or committee shall terminate if that member is no longer a resident of Berkeley or if the member, while intending to return, does not reestablish a place of residence in the City within six months after leaving the City. (Ord. 5430-NS § 1, 1982; Ord. 4803-NS § 1, 1975)



## **Appendix E. Resolution No. 61,312-N.S., Establishing Rights and Obligations of Boards/Commissions**

### **RESOLUTION NO. 61,312-N.S.**

ESTABLISHING CERTAIN RIGHTS AND CERTAIN OBLIGATIONS FOR ALL BOARDS, COMMISSIONS AND COMMITTEES IN THE CITY OF BERKELEY AND RESCINDING RESOLUTION NO. 60,504-N.S. AND ALL AMENDING RESOLUTIONS

WHEREAS, it is the desire of the Council to increase the effectiveness of Berkeley's Board, Commission, Committee (commissions) system; and

WHEREAS, the Council believes effectiveness will be improved by establishing certain guidelines to be followed by the City Council, all Commissions, and City staff.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the following guidelines are hereby established; said guidelines to be incorporated into the Commissioner's Handbook as follows:

#### **Section 1. REFERRALS PRIOR TO COUNCIL ACTION.**

- a) It shall be the policy of the City that commissions shall be given an opportunity to review items relevant to their charge.
- b) City Staff shall advise commissions of items requiring Council action in the development stage.
- c) Each item presented to Council on the action calendar, whether generated by the City Manager, Councilmembers, or Commissions, shall indicate to whom the item has been referred, the date of referral, and any response. Each commission may elect to respond by means of a separate communication.

#### **Section 2. COMMUNICATING WITH COUNCIL.**

- a) Addressing Council at Council Meetings.
  - 1. The authorized representative of a commission shall have the right to address the City Council on matters within their charge at the time an item is heard. Each commission may present a majority and minority position.
  - 2. Authorized representatives of commissions shall address Council from the staff table in front of Council.
  - 3. Commission members not delegated to speak as the official representative may utilize the open mike and may be asked questions by Councilmembers.



b) Presenting Agenda Items.

1. Commissions shall submit items to the Council in the following manner: Upon the direction of a commission, staff shall prepare and submit a completed commission report for the Council agenda directly to the City Clerk no later than three weeks following commission action. The City Clerk will place the report on an upcoming Council agenda based on City Manager timelines as stated in A.R. 1.20.
2. If a commission determines that a matter must be brought to Council's attention and that severe detriment will occur by a three week delay, the commission may request staff submit a report to the City Clerk as soon as possible and request the City Clerk place the matter on the next available Council agenda.
3. The secretary of the commission is responsible for preparing and submitting the commission report as approved by the Commission and signed by the commission (Chair) or its designee. The City Manager may ask the commission for additional information and/or clarification before placing the report on the agenda.
4. In connection with a response to a Council referral or in connection with a subject scheduled for a Council agenda (excepting quasi-judicial matters), any commission may communicate the opinion of fewer members than the officially required majority.

c) Late Comments on Council Agenda Items.

When normal agenda deadlines have passed, and a commission wishes to comment on a matter on the Council agenda, a late communication may be presented through staff, to the City Clerk for inclusion in the Supplementary Communications packet. Specific details on the process to follow are contained in A.R. 1.20.

d) Adhering to Council Rules and Regulations.

Commissions shall adhere to the City Council Rules of Procedure governing which meetings are appropriate for submittal of consent and action items.

Section 3. RECEIVING INFORMATION.

a) Commissions are entitled to request, by majority vote, information from City staff, providing such requests can be accommodated within current work plans. However, the secretary reports directly to a supervisor and may not be able to carry out every recommendation that the commission may have, in which case the commission should request Council permission to pursue a project which will require an excessive amount of staff time.

b) All written communications sent to commissions shall be distributed to all members in the commission agenda packet or at the next meeting of the commission.

c) The roster of commission members is a public document available in the Office of the City Clerk. The roster includes the name, residential address and either a home or business phone number of each commissioner.



d) The Secretary of each Commission shall provide the Council summary to the Chairperson.

e) The Secretary of each Commission shall provide, at the request of the full commission or individual members, copies of the Council summary at the next regularly scheduled meeting.

f) The City Council agendas and summaries are available in the Office of the City Clerk and are regularly posted on the City's website. Commissioners may request the City Clerk mail Council agendas to individual commission members.

#### Section 4.      ROLE OF STAFF.

a) The City Manager shall assign a staff person to act as secretary to each commission, who shall be responsible for assisting the commission in its functions and advising the commission of staff's recommendations.

b) The City Manager shall on an annual basis solicit the opinion of each commission regarding staff service.

c) The City Manager shall include an accompanying report to Council which highlights the nature of any difference and any alternate recommendations in those cases where the City Manager differs with the recommendation of a commission report.

d) The City Clerk will provide the City Manager with copies of each commission report or communication directed to the City Council at the time the secretary submits the report to the City Clerk for the agenda process.

#### Section 5.      ESTABLISHING SUBCOMMITTEES

a) Each commission shall have the right to establish a single purpose subcommittee when needed, which is responsible to the parent body.

b) The subcommittee shall be composed solely of less than a quorum of the parent body and shall be chaired by one of its members.

c) It is the policy of the City Council that each subcommittee shall seek input from citizens, related commissions and other groups.

d) Upon creation of the subcommittee, the parent body shall allow it to operate with the following parameters:

1. A specific charge or outline of responsibilities shall be established by the parent body.
2. If the subcommittee is to hold public hearings, specific direction must be given by the parent body.



3. A target date must be established for report back to the parent body.
4. Maximum life of the subcommittee shall be one year, with annual review and possible extension by the parent body.

e) In the rare cases where it is deemed necessary to establish a joint subcommittee between commissions, the joint subcommittee shall be approved by the City Council and members designated by the City Council.

f) All subcommittee meetings must be held in public places and at wheelchair accessible locations, and should be posted on the official bulletin board within 24 hours of a meeting.

g) The provisions of this resolution shall not apply to subcommittees seeking legal advice and assistance from the City Attorney or meeting with the City Manager or his designees for purposes of real estate or labor negotiations, or personnel matters concerning specific individuals.

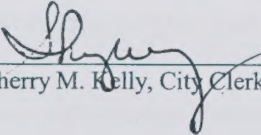
Section 6. That Resolution No. 60,504-N.S. and all amending Resolutions are hereby rescinded.

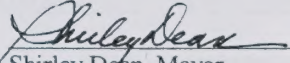
The foregoing Resolution was adopted by the Berkeley City Council on October 30, 2001 by the following vote:

Ayes: Councilmembers Armstrong, Hawley, Maio, Olds, Shirek, Spring, Worthington and Mayor Dean

Noes: None.

Absent: Councilmember Breland.

Attest:   
Sherry M. Kelly, City Clerk

  
Shirley Dean, Mayor



## **Appendix F. Resolution No. 53,989-N.S., Notice to Potential Candidates for Berkeley Elective Office and Individuals Interested in Serving as Members of City Boards and Commissions**

### **RESOLUTION NO. 53,989 —N.S.**

#### **NOTICE TO POTENTIAL CANDIDATES FOR BERKELEY ELECTIVE OFFICE AND INDIVIDUALS INTERESTED IN SERVING AS MEMBERS OF CITY BOARDS AND COMMISSIONS**

BE IT RESOLVED by the Council of the City of Berkeley as follows:

WHEREAS, conflict of interest issues are often complex, creating ambiguities which may deter many qualified and interested citizens from serving as elected officials or members of the City's boards and commissions; and

WHEREAS, there is a need to alert potential candidates for office and prospective appointees to boards and commissions of the existence of such conflict of interest laws and to encourage such individuals to seek out advice when questions arise pertaining to their particular situation.

NOW, THEREFORE, Be It Resolved by the Council of the City of Berkeley that the City Clerk be instructed to provide the following notice to individuals expressing interest in candidacy for Berkeley elective office and for appointment to the City's boards and commissions:

"The purpose of this notice is to alert you to State and local conflict of interest provisions. These provisions may prohibit you, members of your family, or your employer, from having any financial relationship -- such as a contract or consultant position -- with the City, the Berkeley Housing Authority, and the Berkeley Redevelopment Agency, during the term of your office; for members of the City Council such prohibition can extend in certain instances for a one-year period following the conclusion of the term of office.

If a prohibited interest exists, the financial relationship may have to be terminated; for example, a contract may not be renewed or created, a consultant position may have to be withdrawn, your employer or a family member may be required to cease conducting business with the City.

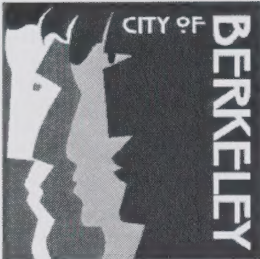
Statements of Economic Interest are required to be filed by elected officials and appointed members of boards and commissions. The information disclosed in such statements provides the public with information concerning the financial interests of those serving in a public or official capacity, as well as assisting in the determination of whether certain of the interests disclosed require appropriate further action. The specific prohibitions applicable to potential conflicts of interest are not deemed "satisfied" or "cured" simply by filing the economic interest statements and disclosing the relevant financial interests; such a filing is a state-mandated requirement and is separate and distinct from any prohibitions that may be imposed as a result of an existing or future financial relationship with the City.

If you are uncertain as to whether existing or future financial interests you, your family, or your employer may have with the City constitute a potential conflict which would require termination or other remedial action upon your assuming elective office or upon your appointment to a City board or commission, you are encouraged to seek further information from the City Attorney's Office by providing a written description of your financial interest or relationship with the City and the elective or appointive position which you are seeking. It is your obligation to seek such advice and to bring any such potential conflicts to the City's attention. The City will not independently investigate the background or financial statements of candidates for elective or appointive office in order to detect potential conflicts of interest."

In effect: November 3, 1987



## Appendix G. Responding to Requests for Accommodations for Persons with Disabilities



Department of Public Works  
Disability Compliance Program

### **RESPONDING TO REQUESTS FOR ACCOMMODATIONS FOR PERSONS WITH DISABILITIES Procedures for Members of Boards and Commissions and Staff**

Members of Boards, Commissions, and the public, who have a disability, may have a right to receive reasonable accommodations, if necessary for them to participate in City meetings and programs. The Americans with Disabilities Act (ADA) and other laws mandate that the City provide programmatic access and effective communication in order that people with disabilities are able to participate in the city's programs, services, and activities including public meetings. (See "What the ADA Says About Accommodations," below.)

Secretaries to Boards and Commissions will respond to accommodation requests according to the procedures below. Individuals with disabilities who need accommodations to participate at a City of Berkeley meeting should make their requests to the Disability Compliance Program, which will evaluate the individual's request and will determine the appropriate method, if any, of accommodation. Individuals must make a disability-related accommodation request at least seventy-two (72) hours in advance of meetings.

1. Notify the Disability Compliance Program of upcoming accommodation requests:
  - a. Nature of the accommodation and how often it is needed,
  - b. Commission assignment or meeting for which accommodation is requested,
  - c. Estimated duration of the assignment.
2. The Disability Compliance Program determines the most effective way to provide an accommodation, whether an accommodation would comply with applicable law (including the Brown Act), coordinates the details with the individual with a disability, and if an accommodation is provided, follows through to ensure its success.



3. The Disability Compliance Program oversees the vendor payment and reimbursement process. To ensure reimbursement for an individual who provides his or her own accommodation at City expense, approval by the Disability Compliance Program must be obtained in writing prior to the meeting for which the accommodation is requested. If approved as an accommodation, procedure for reimbursement is as follows:

- a. Each vendor must fill out a "Vendor Information Questionnaire and Certification" (available from staff or from Finance) before invoicing City.
- b. Vendor or individual with a disability submits an invoice for services or expenses to staff, including signature, a statement of when service or expense occurred, what the Commission activity was, and receipts for expenses.
- c. Staff approves invoice and forwards it to accounting staff for processing.
- d. Finance Department mails check to vendor or individual with a disability.
- e. Reimbursement to an individual who provides his or her own accommodation will be made at the standard rate paid to vendors performing a comparable service.

### **CONSIDERATIONS FOR SELECTING ACCOMMODATION METHODS**

The person requesting an accommodation should make the request well in advance to allow adequate time for staff to make any arrangements. Whether a requested accommodation is approved, or complies with applicable law, may depend, in part, on whether staff has adequate time for the request. Staff may be able to provide an accommodation directly, but it takes time to arrange an accommodation from a service vendor, through the use of assistive technology (equipment), or through modification in the way an activity is conducted.

Accommodations must be reasonable in terms of administrative and technical practicability, availability, and cost. Staff will recommend the most effective method of accommodation that works for the individual with the disability.

Examples of accommodations include, but are not limited to:

- Assistance with writing and other tasks for persons with manual impairments;
- Interpreters or captioning for persons with hearing impairments;
- Speakers for persons with speech impairments;
- Braille, large print, or electronic versions of printed text and descriptions or tactile representations of graphics for persons with vision or other print-related impairments.



The City provides accommodations for participation in regular or special Board and Commission meetings, meetings of subcommittees of Boards and Commissions, and meetings with City staff. The City does not provide accommodations for activities sponsored by another agency or for an individual engaged in community activities that are not official activities of the City.

## **WHAT THE ADA SAYS ABOUT ACCOMMODATIONS**

The ADA describes accommodations generally as “reasonable modifications in policies, practices, or procedures.” 28 C. F. R. sec. 35.130(b)(7). Unless the City can demonstrate that a modification would fundamentally alter the nature of the service, program, or activity, the City must make reasonable modifications when necessary to allow an individual with a disability to participate in the City’s services, programs, and activities. 28 C. F. R. sec. 35.130(b)(7).

Although the City is not required to provide devices or services that are of a personal nature (such as eyeglasses, hearing aids or mobility devices), the ADA requires that communication with disabled members of the public be effective, including the provision of auxiliary aids and services necessary for effective communication with the City.

Regarding effective communication, the ADA’s specific language is:

(a) A public entity shall take appropriate steps to ensure that communications with applicants, participants, and members of the public with disabilities are as effective as communications with others.

(b)(1) A public entity shall furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity conducted by a public entity.

(2) In determining what type of auxiliary aid and service is necessary, a public entity shall give primary consideration to the requests of the individual with disabilities. 28 C. F. R. sec. 35.160.

Auxiliary aids and services includes:

(1) Qualified interpreters, notetakers, transcription services, written materials, telephone handset amplifiers, assistive listening devices, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunications devices for deaf persons (TDD’s), videotext displays, or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(2) Qualified readers, taped texts, audio recordings, Brailled materials, large  
Responding to Requests for Accommodations for Persons with Disabilities page print



materials, or other effective methods of making visually delivered materials available to individuals with visual impairments;

( 3) Acquisition or modification of equipment or devices; and

( 4) Other similar services and actions. 28 C. F. R. sec. 35.104 ( in part).

## **WHAT THE COMMISSIONERS' MANUAL SAYS ABOUT ACCOMMODATIONS**

Sections of the Commissioners' Manual that discuss accommodations include:

Accommodations for Commissioners or Board members with Disabilities

- Chapter II - A. 11, page 18

Reimbursement for disabled support services

- Chapter II - A. 12. c, page 19 – 20

Requirement that Commission meetings be accessible to the public

- Chapter IV - B. 2, page 37

Agenda format and accessibility of meeting facilities

- Chapter IV - E. 2, pages 46 – 47

## **CONTACT INFORMATION**

Department of Public Works  
 Disability Compliance Program  
 1947 Center Street  
 Berkeley, CA 94704  
 Tel: 510.981- 6346  
 TDD: 510.981- 6345  
 Fax: 510.981- 6340  
 E- mail: [dlbrown@ci.berkeley.ca.us](mailto:dlbrown@ci.berkeley.ca.us)



## Appendix H. Resolution No. 61,731-N.S. Stipend Resolution

### RESOLUTION NO. 61,731-N.S.

AUTHORIZING REIMBURSEMENT IN LIEU OF ACTUAL EXPENSES PAID OR INCURRED BY MEMBERS OF CERTAIN BOARDS, COMMISSIONS AND COMMITTEES, AND AUTHORIZING PAYMENT OF ACTUAL EXPENSES UNDER CERTAIN TERMS AND CONDITIONS AND RESCINDING RESOLUTION NOS. 46,721-N.S. AND 60,505-N.S. AND ALL AMENDMENTS

WHEREAS, it is in the public interest to remove barriers from citizen participation on boards, commissions and committees of the City of Berkeley; and

WHEREAS, the Council of the City of Berkeley finds that expenses incident to attending official meetings of said boards, commissions and committees creates an economic hardship on some of the members of said bodies by reason of limited economic resources; and

WHEREAS, the Council of the City of Berkeley finds and determines that it is in the public interest to alleviate this hardship by reimbursing and paying certain minimum allowances for expenses incident to attending official meetings of said bodies; and

WHEREAS, such allowances are determined to be in lieu of actual expenses paid or incurred by said members, except in the case of actual expenses incurred for child care and actual expenses incurred by a member who must employ a paid attendant to provide care for a dependent elderly person while he or she attends meetings; and

WHEREAS, the Council of the City of Berkeley finds that members with severe disabilities require support services, such as readers and attendants, in order to participate fully in board, commission and committee deliberations; and

WHEREAS, the Council of the City of Berkeley finds and determines that it is in the public interest to reimburse for these support costs when they create an economic hardship for disabled members of boards, commissions and committees.

WHEREAS, Resolution No. 46,721-N.S., known as the Stipend Resolution, is being rescinded and readopted due to the many changes that have occurred since the last amendment in 1991 and to clarify and reaffirm the current policy and procedures.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley as follows:

#### Section 1. ELIGIBILITY OF BOARDS, COMMISSIONS AND COMMITTEES.

All Council-appointed members of boards, commissions and committees who meet the criteria set forth in Sections 2 or 3 of this Resolution are eligible.



This Resolution shall apply only to Council-appointed boards, commissions and committees, and temporary task forces and joint subcommittees established by Council where the membership is composed of Council-appointed board/commission members. Payments in lieu of expenses for other than members of Council-appointed boards, commissions, committees, task forces and joint subcommittees, shall be addressed as part of the Council's budgetary process.

Section 2. ANNUAL STATEMENT OF ELIBILITY.

Those board, commission and committee members desiring said payments shall file annually with the secretary of the board, commission or committee, a statement certifying that his or her family income for the preceding year was below the limits specified in Section 3.

Commissioners listed as dependents on their family's Federal Income Tax, shall file annually with the secretary of the board, commission or committee, a parental statement certifying that the family income for the preceding year was below the limits specified in Section 3.

Section 3. FINANCIAL LIMITATIONS ON ELIGIBILITY.

Those eligible members whose annual family income as filed jointly for Federal Income Tax purposes is below \$20,000 per year shall be entitled to receive payments as set forth in Section 5.

When a member becomes aware that his/her annual family income has or will exceed \$20,000, that member shall immediately notify the secretary of the board, commission or committee of which he or she is a member, of this fact and request that his or her eligibility to receive payments be cancelled.

When an eligible member of any board, commission or committee whose family income for the preceding year was more than \$20,000 finds that his/her family income for the current year will be below \$20,000, he or she may file a certified declaration with the secretary of the board, commission or committee describing the general circumstances which have occurred which resulted in the lower income. Such certified declaration shall make the person again eligible for payments.

Section 4. DISABLED SUPPORT.

Eligible members who are disabled and whose incomes fall within the limitations set forth in Section 3, qualify for reimbursement for the costs of readers to help in reviewing written materials in the board, commission, or committee packets, for attendants to accompany members to meetings, and other support costs that are required in order to allow such disabled members to participate fully in board, commission and committee deliberations.



Disabled board, commission and committee members desiring reimbursement for these costs, will file in addition to the statement of eligibility set forth in Section 2, a statement with the secretary of the board, commission or committee that certifies the support services that the member requires in order to participate fully. If the member's needs change, he/she will immediately notify the secretary of the board, commission or committee of which he or she is a member. Otherwise, the statement certifying the need for support services will continue to be in effect for the duration of the board, commission, or committee member's term of appointment.

#### Section 5. REIMBURSEMENT.

Eligible members are authorized to receive \$40 for each official meeting attended, not to exceed two meetings each month **AND** reimbursement for actual expenses incurred upon presentation of a receipt from the person(s) providing the following services:

- a) Child care expenses incurred by a member while he or she attends meetings;
- b) Expenses incurred by a member who must employ a paid attendant to provide care for a dependent elderly person while he or she attends meetings;
- c) Expenses incurred by a disabled member who requires support services in order to participate fully on board, commission or committee meetings.

#### Section 6. CLAIMS.

Claims for reimbursement in lieu of actual expenses paid or incurred shall be filed with the secretary of the board, commission or committee. Said secretary shall process the claim for payment pursuant to procedures established by City Administrative Regulation 3.1 and as amended by the City Manager and City Auditor.

#### Section 7. REIMBURSEMENTS NOT SUBJECT TO FINANCIAL LIMITATIONS.

- A. Community Health Commission. Reimbursements for members of the Community Health Commission shall be made in the following manner, provided, however, that the total reimbursement for all costs incurred by all members for all expenses in a fiscal year shall not exceed \$500:
  - 1) Any trip or meeting requiring reimbursement shall receive prior approval of the Commission;
  - 2) Any trip or meeting requiring reimbursement which would require participant(s) to stay overnight or travel more than 50 miles shall require the additional prior approval of the City Council; and
  - 3) Reimbursement rates and conditions for travel, meals and lodging shall be as set forth in the City's Administrative Regulation on meeting and travel expenses.



- B. Human Welfare and Community Action Commission. The Human Welfare and Community Action Commission provides for alternate representatives of the poor to be elected or to be appointed when a vacancy occurs. Alternate representatives of the poor shall be eligible for stipend payments when serving in place of the principal member.
- C. Commission on Disability. Pursuant to Berkeley Municipal Code Section 3.66.040, low income status for members of the Commission on Disability is not a prerequisite for reimbursement of attendant care expenses.
- D. Police Review Commission. Pursuant to Berkeley Municipal Code Section 3.32.060, Police Review Commissioners shall receive \$3 per hour for their time and work investigating complaints, reviewing policies and practices, and attending meetings, but in no case shall compensation for any one commissioner exceed \$200 per month.

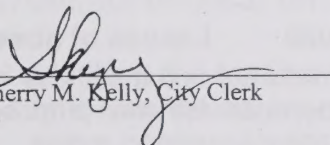
BE IT FURTHER RESOLVED, that Resolution Nos. 46,721-N.S. and 60,505-N.S. and all amending resolutions are hereby rescinded.

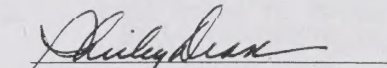
The foregoing Resolution was adopted by the Berkeley City Council on September 10, 2002 by the following vote:

Ayes: Councilmembers Armstrong, Breland, Hawley, Maio, Olds, Shirek, Spring, Worthington and Mayor Dean.

Noes: None.

Absent: None.

Attest:   
Sherry M. Kelly, City Clerk

  
Shirley Dean, Mayor



## Appendix I. BMC Chapter 3.02, Automatic Termination of Appointments

### Chapter 3.02

#### AUTOMATIC TERMINATION OF APPOINTMENTS

##### Sections:

- 3.02.010**      **Commissioner defined.**
- 3.02.020**      **Absence from meetings--  
Termination procedure.**
- 3.02.030**      **Leaves of absence.**
- 3.02.040**      **Limiting the number of  
terms commissioners may  
serve consecutively.**
- 3.02.050**      **Standard for incompatibility  
for members of advisory  
boards and commissions--  
Council determination--  
Remedies.**

##### **3.02.010**      **Commissioner defined.**

"Commissioner" shall be defined as a voting member of any board, commission or committee established by the City Council, notwithstanding the manner in which such voting member is appointed. (Ord. 5021-NS § 2, 1977)

##### **3.02.020**      **Absence from meetings-- Termination procedure.**

A. The term of any commissioners, as defined in Section 3.02.010, except one serving on the Police Review Commission, who has been absent from three consecutive regular meetings of the board, commission or committee on which such commissioner serves, shall automatically expire as set forth in this section.

B. The secretary of the board, commission or committee shall report to the City Clerk the third consecutive absence from regular meetings of any commissioner no later than one week after the third absence. The appointment of the commissioner shall expire on the date the fact of the third consecutive

absence is reported to the City Clerk. Within one week after receiving such notification, the City Clerk shall notify any commissioner whose appointment has automatically terminated and report to the appointing Councilmember, or Council, that a vacancy exists and that an appointment shall be made to fill the vacancy.

C. The secretary of each board, commission or committee shall report on each January 1st and July 1st the attendance record of each member of said body to the City Clerk for the six month period immediately preceding each January 1st and July 1st.

D. The City Clerk shall note any commissioner reported as being absent from 50 percent or more of all regular meetings held during the six month period reported. The appointment of the commissioner shall expire on the date the attendance is reported to the City Clerk. Within one week after receiving such attendance report, the City Clerk shall notify any commissioner whose appointment has automatically terminated and report to the appointing Councilmember, or Council, that a vacancy exists and that an appointment should be made to fill the vacancy. (Ord. 5940-NS § 1, 1989; Ord. 5576-NS § 1, 1983; Ord. 5021-NS § 1, 1977)

##### **3.02.030**      **Leaves of absence.**

The following circumstances shall not count as absences for the purposes of Section 3.02.020:

A. A member of a board, commission or committee may be granted a leave of absence not to exceed three months by the appointing Councilmember or the Council and a temporary vacancy shall thereupon exist for the period of such leave of absence. Notice of the leave of absence must be filed with the City Clerk prior to the absence. During the period of such temporary vacancy, the appointing Councilmember or the Council may fill such vacancy by a temporary appointment to said commission; provided, however, that the period of such temporary appointment shall not exceed the period of the temporary vacancy. At the expiration of a



leave of absence so granted, the member shall automatically resume full membership on the board, commission or committee.

B. Commissioners may request that an absence be excused due to a conflict between the date of a scheduled commission meeting on which the commissioner sits and a religious or cultural holiday. Such a request shall be made in writing on a form provided by the City and submitted to the secretary prior to the meeting for which the commissioner's absence is to be excused. The request shall not be subject to the approval of the commission but shall be accepted upon request. The secretary shall then excuse that absence and exclude it from the attendance report sent semi-annually to the City Clerk.

The definition of a religious or cultural holiday shall be left to the individual commissioner. However, the following list may be considered illustrative of the religious and cultural holidays for which a commissioner may seek an excused absence: Al Hijrah New Year, Ash Wednesday, Chinese New Year, Diwali, Easter Sunday, Eid Al Fitr, Eid Al Adha, Good Friday, Hanukkah, Holi, Kwanzaa, Palm Sunday, Passover, Rosh Hashanah, St. Patrick's Day and Yom Kippur. (Ord. 6610-NS § 1, 2001; Ord. 5021-NS § 3, 1977)

### **3.02.040 Limiting the number of terms commissioners may serve consecutively.**

Commissioners shall serve not more than eight consecutive years on a commission, notwithstanding interruption of service due to the following:

A. Absence from the commission due to termination pursuant to Berkeley Municipal Code Section 3.02.020;

B. Absence from the commission due to any leave(s) of absence pursuant to Berkeley Municipal Code Section 3.02.030;

C. Absence from the commission due to termination pursuant to the provisions of the Conflict of Interest Code, for failure to file the required Statement of Economic Interests, and subsequent reappointment.

Termination of appointment pursuant to this section shall be eight years from the date of the initial appointment. Commissioners cannot be reappointed to their respective boards or commissions until a two-year break in service has occurred.

Notwithstanding the above, if the term of a member of the Mental Health Commission would terminate prior to expiration of the term the member was appointed to, this section shall not require that such member be terminated prior to the member serving the full term to which the member was appointed.

This provision shall become effective December 1, 1990, and shall apply to all appointments made on or after that date. (Ord. 6624-NS § 1, 2001; Ord. 6201-NS § 1, 1993; Ord. 6009-NS § 1, 1990)

### **3.02.050 Standard for incompatibility for members of advisory boards and commissions-- Council determination-- Remedies.**

A. The Council finds and declares that:

1. Citizen advisory boards and commissions (collectively "commissions") bring to bear significant expertise on issues that come before the City.

2. Sitting on a volunteer advisory commission is a significant commitment of time and energy, which prevents many qualified individuals from sitting on commissions.

3. Individuals who are particularly qualified in a particular area will often have employment that is in some way related to the issues that come before the advisory commissions on which they sit.

4. Although the Council has provided that advisory commissions are subject to the City's Conflict of Interest resolution, in light of their advisory status and the need to attract qualified commissioners, advisory commissions should not be subject to every possible prohibition related to conflicts of interest.

5. It is the purpose of this section to establish a fair and workable standard for



determining when outside activities for compensation are incompatible with membership on an advisory commission, to establish the obligations of members of advisory commissions with respect to outside activities for compensation, to provide a process for determinations relating to incompatibility of outside activities for compensation and to establish remedies.

B. Pursuant to its authority under Government Code Section 1126(b), the City Council establishes and declares that outside activities for compensation shall not be considered incompatible with membership on City commissions other than those listed in subsection (I), but members of such commissions shall recuse themselves with respect to commission actions relating to any outside activity for compensation to the extent the action involves any specific employment responsibilities for which they receive compensation.

C. The City Attorney shall employ the standards set forth in the preceding subsection in making determinations under Government Code Section 1126 with respect to members of commissions other than those listed in subsection (I). Whenever the City Attorney issues a written opinion under Government Code Section 1126, that opinion shall be immediately transmitted to the City Clerk and the affected commissioner.

D. If the affected commissioner notifies the City Clerk in writing of his or her disagreement with the City Attorney's opinion within 14 days after the opinion is transmitted to him or her, the City Clerk shall place the matter on the Council's agenda at the earliest possible time and shall notify the affected commissioner of the date and time of the meeting at which the Council will consider the matter.

E. The Council shall allow the affected commissioner an opportunity to address it, shall determine whether to affirm or overrule the City Attorney's opinion and may make any order consistent with this section and Government Code Section 1126.

F. If the commissioner fails to comply with the City Attorney's opinion or, on appeal, the order of the City Council, the commissioner's

seat shall be deemed automatically vacated as of the date of the Council's order.

G. From the date the City Attorney's opinion is issued and transmitted to the board or commissioner who is its subject, until completion of Council proceedings under this section, that commissioner shall comply with the incompatibility standard set forth in subsection (B) as applied in the City Attorney's opinion. Thereafter, the commissioner member shall comply with the order of the Council.

H. Prior to accepting any appointment to any commission, the nominee shall disclose to the appointing Councilmember every employment, activity or enterprise for compensation that falls within the scope of the authority of the board or commission for which he or she has been nominated.

I. The standard set forth in subsection (B) of this section applies to commissioners appointed by the Council to all City boards and commissions except the Board of Library Trustees, the Fair Campaign Practices Commission, Homeless Commission, Housing Advisory Commission, Human Welfare and Community Action Commission, Landmarks Preservation Commission, Planning Commission, Police Review Commission, and Zoning Adjustments Board.

J. Nothing in this section affects any disclosure, disqualification or eligibility requirement of under any provision of federal, state or local law other than Government Code Section 1126(b). (Ord. 6643-NS § 1, 2001)



## APPENDIX J. Checklist For Brown Act And Commissioner's Handbook Compliance

Prepared by City Attorney

(Revised January 2005)

This checklist describes the key steps necessary for conducting a meeting in compliance with the Brown Act and the Commissioner's Manual.

### A. APPLICABLE TO "LEGISLATIVE BODIES"

These rules apply to any "legislative body" defined below. (Only those of interest generally applicable to the City have been described.)

1. The governing body of the local agency, such as the City Council, is a legislative body. (Government Code section 54952(a).)<sup>4</sup>
2. A body established by statute such as Joint Powers Agencies established by a group of cities is a legislative body. (Section 54952(a).)
3. All commissions, committees, boards or other bodies of a local agency, whether advisory or decision-making, temporary or permanent, created by charter, ordinance, resolution or formal action of the legislative body, are themselves legislative bodies. (Section 54952(b).) Thus, every task force, committee or other advisory group, however denominated, is likewise a "legislative body," if it was created by formal action of the council or commission, such as by motion.
4. All committees of a quorum of the legislative body are legislative bodies. (Section 54952(b)).
5. Every standing subcommittee of less than a quorum of a legislative body which either

has a continuing subject matter jurisdiction, or has a meeting schedule fixed by charter, ordinance or resolution or formal action of the legislative body, constitutes a legislative body. (Section 54952(b).)

6. Thus, only ad hoc advisory<sup>5</sup> subcommittees of less than a quorum of the legislative body are not deemed separate legislative bodies. To be considered ad hoc the group must be:

- a.) Composed solely of less than a quorum of the parent body. (No citizens, members of other commissions, Council members or other persons can be included in the committee. If others are included, then the group is considered a legislative body under A.3 above and is required to follow all the procedures applicable to a legislative body); and
- b.) Have a finite charge and be required to report back to the parent body within a specific time period, of less than a year; and
- c.) Have no meeting schedule established by the parent body, law or resolution, which set up the ad hoc subcommittee.

### B. PROCEDURES TO BE FOLLOWED BY LEGISLATIVE BODIES THAT CAN MAKE FINAL DECISIONS

#### 1. Decision-making Legislative Bodies Must Establish A Regular Meeting Schedule

Section 54954 requires that each legislative body, except for advisory and standing committees, must establish a schedule of its regular meetings, which includes the time and location of the meeting. Most City commissions would be considered advisory and thus exempt from this requirement under an amendment to the Act, which created the

<sup>4</sup> All statutory references are to the Government Code unless otherwise noted.

<sup>5</sup> **Important Caveat:** This exception does not apply if the subcommittee has been delegated authority by the parent body. If so, it constitutes another legislative body under A.3, above.



exception and became effective on January 1, 1998. Similarly, all standing subcommittees are exempt from this requirement even though they are otherwise subject to the Act. The only commissions that would have to establish a regular meeting schedule are those commissions that have final decision-making authority as to some matters, such as the Board of Library Trustees, Planning Commission, Zoning Adjustments Board, Landmarks Preservation Commission, Fair Campaign Practices Commission, Police Review Commission and Housing Advisory Commission. Note that meetings must be held within City limits unless the meeting falls within one of the exceptions in section 54954(b). (Consult the City Attorney if there is some special reason to have a meeting outside City limits.)

### **C. PROCEDURES TO BE FOLLOWED BY ALL LEGISLATIVE BODIES, WHETHER ADVISORY OR DECISION-MAKING**

#### **1. Public Comment**

##### **a. When, at the beginning or during each item?**

Decide whether to allow comment at the beginning or during each item as authorized under section 54954.3. Since the Act requires that public comment for regular meetings be permitted on any subject within the subject matter jurisdiction of the city, if you decide to allow comment during each item, you will also need to decide when you will allow general comments on subjects not related to anything on that agenda.

##### **b. Any overall time limits and/or limit per speaker?**

Section 54954.3(b) allows a commission to adopt reasonable regulations to govern public comments. Typical of such rules are time limits on speakers and overall time limit on public comment. You should decide whether to set an overall time limit and/or limit per speaker.

##### **c. Want to draw a distinction between public comment at regular meetings versus special meetings?**

Section 54954.3(a) requires public comment at special meetings as well as at regular meetings. At special meetings, the comment can be confined to the subject matter to be considered at the special meeting. By contrast, at regular meetings the speaker can address any matter within the jurisdiction of the commission. You should decide whether to distinguish between regular and special meetings, for purposes of public comment.

##### **d. No Discussion of Items Raised At Public Comment**

Public comment cannot be used to start a discussion between commissioners or to take action in response to comments. Section 54954.2 does allow members of the legislative body or its staff to make brief responses to comments made at public comment. It is also permissible for a member of a legislative body to ask a question for clarification, make a brief report on his or her own activities and make a referral to staff or ask that an item be placed on a future agenda.

#### **2. Media List**

In order to give proper notice of a special meeting, Section 54956 requires that each local newspaper of general circulation, radio or television station that has requested notice in writing receive the agenda for the meeting at least 24 hours in advance of the meeting. (See section C.6. of this memorandum, infra.) Thus, it is important to ensure that the commission/committee secretary maintain a current list of such media. The City Clerk has developed a list of media that she uses to give notice of City Council special meetings. You should use this list and add any other radio or television station that may have sought notice of your particular commission or committee meetings.

#### **3. Legislative Bodies Must Establish A List Of Persons Requesting Mailed Notice And Agenda Packets And Mail Such Agendas**



### And Agenda Packets To Such Persons By A Specified Time

The rules governing the mailing of agendas are set forth in Section 54954.1. These rules require that any person who requests a copy of the agenda and agenda packet in writing must be mailed a copy of the agenda and packet at the time that the agenda is posted or a distribution is made to a majority of the members of the Council/commission. Such a written request for agendas and packets is effective for the calendar year in which it is requested and must be renewed following January 1 of each year. (However, failure to follow this requirement will not result in the invalidation of the action taken by the legislative body.) The legislative body may establish a fee to cover the cost of mailing such agendas and supporting documents, and must make sure that it maintains a continuously updated list of persons who have requested agendas and agenda materials in writing.

#### 4. "Meetings"

All "meetings" must be conducted in compliance with the Act. Any contact between a quorum of the legislative body, either directly or through intermediaries to "develop collective concurrence as to action to be taken" on any matter that is "within the subject matter jurisdiction" of the City, is an illegal meeting, since it cannot be noticed, as required below, and members of the public cannot be present. Memoranda from staff asking for comment falls into this category of prohibited serial meetings because such commissioner feedback assists staff in developing a position, which takes into account the points of view of all commissioners and thus results in the forbidden collective concurrence of the legislative body.

#### **a. Electronic Mail**

E-mail communications between a quorum of a legislative body to develop a collective concurrence is also an illegal serial meeting. (Section 54952.2(b).) To avoid this problem, exercise caution in the use of e-mail. For example, when staff emails a quorum of a

legislative body, place the members' e-mail addresses in the "bcc" address line. This will help to avoid an inadvertent violation of the Act via use of the "reply to all" function.

#### **b. Lobbying**

The purpose of the Act is to ensure that such deliberations take place in public view, at a noticed public meeting. Serial lobbying by members of the public of all commission members is not prohibited as long as they are not acting as the agents of any commissioners. (Section 54952.2 (c)(1).)

#### 5. Exceptions - Gatherings That Are Not Meetings Subject To The Act

Certain gatherings of a quorum of a legislative body are not considered a meeting subject to the Act. Major exceptions not previously discussed are described below:

#### **a. Attendance By One Commission Or Council At A Noticed Meeting Of Other Commission Of This Or Another Public Agency**

Attendance at a meeting of another commission or the City Council does not need to be separately noticed, provided that a quorum of the attending body does not discuss privately among themselves, other than as part of the scheduled meeting, business of a specific nature that is within the subject matter jurisdiction of that body. (Section 54952.2(c)(4).) This exception includes noticed meetings of legislative bodies of other public bodies, not just those of City commissions or the Council.

#### **b. If a Majority of Members Of A Parent Body Attend An Open And Noticed Meeting Of A Standing Subcommittee, Non-Subcommittee Members May Attend Only As Observers**

If the standing subcommittee members of a legislative body plus attending non-subcommittee members together comprise a majority of the parent legislative body, the non-members' role must be confined to a role as observers. (Section 54952.2(c)(6).) The apparent intent is to ensure that such



meetings do not turn into de facto meetings of a quorum of the parent body, since they have not been noticed as such. The main purpose of this requirement is to avoid having to notice meetings as ones of the entire legislative body out of fear that a quorum may attend to observe the meeting.

#### **c. Attendance at Conferences And Other Gatherings Open To Members Of The Public**

Attendance at a public conference is permissible as long as a quorum of the body do not discuss among themselves specific business that is within the subject matter jurisdiction of the agency.

#### **d. Purely Social Or Ceremonial Occasions**

Attendance at purely social or ceremonial occasions are not considered meetings as long as the participants do not discuss among themselves business of a specific nature that is within the subject matter jurisdiction of the local agency. (Section 54952.2(c)(5).)

#### **e. Open And Public Community Meeting Organized By Someone Other Than The City To Address A Topic Of Local Community Concern**

Attendance at a meeting organized by persons or groups other than the City to address a subject of local community concern may be attended without noticing the meeting as long as members of the legislative body only participate in the public program and do not discuss among themselves matters of specific business within the jurisdiction of the City.

#### **6. 72 hour Advance Posting of Agendas for Regular Meetings**

Under Section 54954.2, a "brief general description" of each item of business to be "transacted or discussed" at any regular meeting must be described on the agenda and the agenda must be posted in "a location that is freely accessible to members of the

public" at least 72 hours before the meeting. The City has erected a publicly accessible bulletin board for this purpose in front of Old City Hall. Please post your notice under the listing for your board commission or task force. The notice may be posted at other locations as well.

#### **a. Need To Take Immediate Action Came To The Attention Of The Commission Less Than 72 Hours Prior To The Meeting; Emergency Exception Generally Inapplicable**

An item may be added to the agenda if the commission finds by a two-thirds vote, or by unanimous vote if less than two-thirds of the members are present, that the need to take immediate action came to the attention of the City less than 72 hours before the meeting. (Section 54954.2(b)(2).) Be careful not to overuse this exception. It should normally be triggered only when some precipitating event that occurs and comes to the attention of the City less than 72 hours from the event. The Commission should seriously consider whether there is a really a need to take immediate action. When it does so it undermines the important public policy goal of ensuring that all relevant stakeholders and points of view are considered before a recommendation to the Council is formulated. Although the Brown Act also has special noticing procedures for an "emergency situation," Section 54956.5 so narrowly defines this term ("work stoppage, crippling activity that severely impairs public health, safety or both...") that it is generally inapplicable.

#### **b. Adjourned Meetings and Continued Hearings**

The 72 hour posting requirement need not be met where an item was properly noticed to be considered at a prior meeting that occurred less than five calendar days before the present meeting, and at that prior meeting the commission adjourned its consideration of that item to the present time and location. (Sections 54955, 54954.2(b)(3).) Within 24 hours of either an order of adjournment or continuance, the order which sets forth the time and place of the adjourned meeting or



continued hearing, must be posted at a conspicuous location on or near the door of the location at which the order was made. (Sections 54955, 54955.1.) However, if a hearing is continued to within less than twenty-four hours, a copy of the order must be posted immediately. (Section 54955.1.) When a quorum of the legislative body is not present, the members who are present can adjourn the meeting to a set time and place or they can continue the meeting as a subcommittee. (Section 54955.) Although it is generally not advisable for the present members to continue in the meeting as a subcommittee, because the subcommittee cannot make recommendations to the Council, it may be advisable under some circumstances. For example, when members of the public are present and want to give their input on some policy matter pending before the commission, and the matter was scheduled for a public hearing, the members present may wish to continue as a subcommittee in order to obtain the input from the public so as to not inconvenience the members of the public who came to give testimony.

#### 7. Receipt of Notice Of Special Meetings

Any meeting not on the regular meeting schedule is a special meeting. The procedure for calling a meeting is governed by Section 54956. Notice of a special meeting may be delivered by any means, but each member of the commission and any member of the media requesting notice as set forth in Section C.2, above, must receive the agenda at least 24 hours before the meeting. If any member has filed a written waiver of notice, then receipt by such member of the notice is not required. Notice is deemed to have been dispensed with if a member is actually present. The meeting can be called by the commission chair or by a majority vote. Only items that are described on the agenda may be discussed or acted upon. The call and notice (special meeting agenda) must be posted at least 24 hours prior to the meeting on the bulletin board in front of Old City Hall, at 2134 Martin Luther King Jr. Way.

#### 8. Teleconferencing Or Videoconferencing Meetings

The Act allows meetings to be conducted by either teleconferencing or videoconferencing under very specific procedures, including: (1) the requirement that each location be identified in the notice and agenda of the meeting and made accessible to the public, (2) all votes must be by roll call and (3) public comment may be made at any of the noticed locations. (Section 54953.) Because such meetings present logistical difficulties, they should be planned well in advance with staff to make sure teleconferencing or videoconferencing is feasible. Members of the public can however submit comments on a speakerphone at the meetings without the need for the legislative body to follow the teleconferencing noticing procedures. Of course, if such a process is anticipated, the Commission should work with staff in advance to make sure that a speaker phone can be arranged.

#### 9. Meetings Open to The Public/Held Within the City Limits/Accessibility Requirements

With a few narrow exceptions not applicable to most commissions, all meetings of legislative bodies must be open to the public. (Section 54953.) No one can be required to give his or her name in order to attend a meeting. Audio or videotaping of the meeting must be allowed except when the legislative body finds that the recording is performed in a manner that constitutes "a persistent disruption of the proceedings." (Section 54953.5(a).) With some narrow exceptions, meetings must be held within the jurisdictional limits of the City. (Section 54954.) The City Council has adopted a resolution that provides broader noticing requirements for even advisory ad hoc subcommittees of a board or commission. (See Section 12 below.) Effective 2003, provisions of the federal Americans With Disabilities Act (ADA) have been expressly incorporated into the Brown Act. These amendments do not result in any change in the law. The ADA has always been applicable to the manner in which the City conducts its public meetings. A separate



handout describes the accessibility requirements that must be observed.

#### 10. Minutes

Although the Brown Act does not require minutes, except for closed sessions, the Commissioner's Manual does require minutes of Commission meetings except for subcommittee meetings. When required, they may be action minutes.

#### 11. Records Related To Agenda Items

All reports, motions or other writings disseminated by the commission or the staff to a majority of the members of the commission must be available for public review at the commission meeting on the date that the subject to which it relates is on the commission agenda. (Section 54957.5.) Any matter disseminated to the commission at the meeting by other persons must be made available to the public upon request without delay. (*Id.*) While one-way communications by email or regular mail are not illegal serial meetings, if these memoranda or emails relate to a subject on a subsequent agenda, they should be made part of the agenda packet for that meeting and available for public scrutiny.

#### 12. Closed Sessions

Closed sessions are rarely permissible for commissions. They are authorized by the Brown Act for certain specified reasons generally only applicable to the City Council. The most common reasons for closed sessions are to discuss pending or threatened litigation with legal counsel, give instructions to a labor negotiator and to appoint, evaluate, hear charges against or dismiss an employee. For most commissions the only occasion for a closed session may be in connection with threatened or pending litigation. Commissioners may receive confidential attorney-client information on behalf of the City of Berkeley in connection with such a closed session. It is the City that is the client. Unauthorized disclosure of such confidential attorney-client information has always been a violation of City of Berkeley's attorney-client privilege. In addition, as of

2003, it is also a violation of the Brown Act. (Section 54963.) Please contact the City Attorney for advice significantly in advance of any proposed closed session to ascertain whether under the particular facts, the commission is authorized to conduct a closed session and if so how such a closed session must be noticed and conducted.

#### 13. Council Resolution Requirements Applicable to all Standing and Ad Hoc Subcommittees

Council Resolution 61,312—N.S., an exhibit to the Commissioner's Handbook, sets forth additional requirements applicable to subcommittees – whether or not they would otherwise be subject to the Brown Act – under the standards enunciated earlier in this checklist. All subcommittees should consult this resolution closely. Some of its key requirements are that such subcommittees: have a single purpose, be composed exclusively of less than a quorum of the parent body, have a specific charge, have a target date to report back to the parent body, meet in a wheelchair accessible public place and post their meeting notice 24 hours in advance of the meeting. The Council resolution also provides that subcommittees may meet in closed session to receive advice from the City Attorney. As stated above however, please contact the City Attorney for advice on whether a closed session is permissible.



**APPENDIX K. Council Determination as to Incompatibility; Recusal; Automatic Vacancy****(Berkeley Municipal Code § 3.02.050)**

- A. Whenever the City Attorney issues a written opinion that a member of any City board or commission is engaged in an employment, activity or enterprise for compensation which is inconsistent, incompatible or in conflict with his or her duties as a board or commission member, that opinion shall be immediately transmitted to the City Clerk and the affected board or commission member.
- B. If the affected board or commission member notifies the City Clerk in writing of his or her disagreement with the City Attorney's opinion within 14 days after the opinion is issued, the City Clerk shall place the matter on the Council's agenda at the earliest possible time and shall notify the affected board or commission member of the date and time of the meeting at which the Council will consider the matter.
- C. The Council shall allow the affected board or commission member an opportunity to address it and shall then determine whether to affirm or overrule the City Attorney's opinion.
- D. If the Council overrules the City Attorney's opinion, the affected board or commission member shall be conclusively considered not to be engaged in an employment, activity or enterprise for compensation which is inconsistent, incompatible or in conflict with his or her duties as a board or commission member and no further action shall be taken.
- E. If the Council affirms the City Attorney's opinion, the board or commission member's seat shall be deemed automatically vacated as of the date of the Council's decision, unless the City Attorney's opinion states, or the Council determines, that the incompatibility is not pervasive, in which case the board or commission member may remain on the board or commission but shall recuse himself or herself from decisions relating to his or her employment, activity or enterprise for compensation.
- F. From the date the City Attorney's opinion is issued and transmitted to the board or commission member who is its subject, until completion of Council proceedings under this section, the board or commission member shall recuse himself or herself from decisions relating to his or her employment, activity or enterprise for compensation.
- G. Prior to accepting any appointment to any board or commission, the nominee shall disclose to the appointing Councilmember every employment, activity or enterprise for compensation that falls within the scope of the authority of the board or commission for which he or she has been nominated. (Ord. 6643-NS § 1, 2001)



**APPENDIX L. Resolution Number 63,138-N.S. Incompatible Offices****RESOLUTION NO. 63,138-N.S.****AMENDING THE CITY OF BERKELEY COMMISSIONERS' MANUAL CHAPTER II(B)(3)  
TO CLARIFY LANGUAGE REGARDING INCOMPATIBLE OFFICES**

WHEREAS, it is the desire of the City Council to allow commissioners to serve on two or more city boards or commissions; and

WHEREAS, on October 20, 2005, the City Council adopted Berkeley Municipal Code (BMC) Chapter 3.80 (Ordinance No. 6,876-N.S.) abrogating the common law doctrine of incompatible offices with respect to membership on two or more city boards or commissions; and

WHEREAS, the Commissioners' Manual provides basic information to all members, and establishes certain standards of conduct and procedure, and delineates responsibilities of secretaries, chairpersons and the body as a whole; and

WHEREAS, there is a need to modify language in Chapter II(B)(3) of the Commissioners' Manual to reflect the City's abrogation of the Common Law Doctrine of Incompatible Public Offices with respect to membership on two or more city boards or commissions as codified in BMC Chapter 3.80.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Commissioners' Manual is hereby amended as noted in Exhibit A to abrogate the Common Law Doctrine of Incompatible Public Offices with respect to membership on two or more city boards or commissions.

BE IT FURTHER RESOLVED, that Resolution No. 62,418-N.S. is hereby amended.

The foregoing Resolution was adopted by the Berkeley City Council on December 13, 2005 by the following vote:

Ayes: Councilmembers Anderson, Capitelli, Maio, Moore, Olds, Spring, Worthington, Wozniak and Mayor Bates.

Noes: None.

Absent: None.

Attest: Sara T. Cox  
Sara T. Cox, City Clerk

Tom Bates  
Tom Bates, Mayor



## APPENDIX M. Resolution Number 63,876-N.S. Video Training for Commission Officers

### RESOLUTION NO. 63,876-N.S.

AMENDING RESOLUTION NO. 60,531-N.S. RELATING TO MANDATORY TRAINING FOR CHAIRPERSONS AND VICE CHAIRPERSONS OF CITIZEN BOARDS AND COMMISSIONS

WHEREAS, Resolution No. 60,531-N.S. was adopted on May 9, 2000 by the City Council; and

WHEREAS, Resolution No. 60,531-N.S. requires all chairpersons and vice chairpersons of citizen boards and commissions to attend mandatory annual training; and

WHEREAS, completion of the required training by watching a comprehensive video is an acceptable, convenient, and beneficial method for meeting the training requirement.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that Section 2 of Resolution No. 60,531-N.S. is hereby amended as follows:(amended language appears in *italics*):

#### Section 2. Mandatory Annual Training for Officers

Chairpersons and vice chairpersons are required to attend mandatory annual training on: a) the parliamentary procedure of conducting and presiding over meetings according to the Brown Act and City policy; b) the role of the commission and its organization; and c) the commission's relationship to the City Council, the City Manager, the secretary, other commissions, outside agencies, and the general public.

In the event the officer(s) of the commission fails to attend a training session, her/his position as an officer of the commission shall be forfeited immediately following the last training session scheduled that year. Several training workshop sessions shall be provided each year in order to accommodate everyone's schedule.

*In lieu of attending an in-person training, the chairperson or vice chairperson may view, in its entirety, a training video obtained from the City Clerk Department or the training video for this purpose posted on the City Clerk website.*

*Upon completion, the chairperson or vice chairperson must file with the City Clerk an Affirmation of Completion.*

*The training video must be viewed and the Affirmation of Completion must filed with the City Clerk no later than 60 calendar days from the date of election as chairperson or vice chairperson. Failure to complete the video training and file the Affirmation of Completion within 60 days of election will result in the immediate forfeiture of the position of chairperson or vice chairperson.*

\* \* \* \* \*

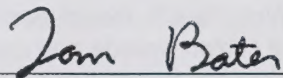


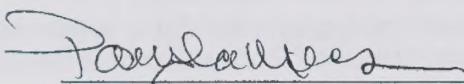
The foregoing Resolution was adopted by the Berkeley City Council on November 6, 2007 by the following vote:

Ayes: Anderson, Capitelli, Maio, Moore, Olds, Spring, Worthington, Wozniak and Bates.

Noes: None.

Absent: None.

  
Tom Bates, Mayor

Attest:   
Pamyla Means, MMC, City Clerk



**APPENDIX N. Resolution Number 63,949-N.S. Meeting Frequency Schedule****RESOLUTION NO. 63,949-N.S.****2008 COMMISSION MEETING FREQUENCY SCHEDULE**

WHEREAS, on June 13, 2005, the City Council adopted a plan which created three categories of meeting schedules and a process for requesting Council or Agenda Committee approval of any extra meetings; and

WHEREAS, Council also directed commission secretaries to submit an information report whenever a commission cancels two consecutive meetings for lack of quorum and an annual attendance report; and

WHEREAS, adopting a commission meeting schedule will provide commissions with direction to set their respective regular meeting schedules for subsequent years.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that commission secretaries shall submit an information report to Council whenever a commission cancels two consecutive meetings for lack of quorum.

BE IT FURTHER RESOLVED, that commissions may request that the Council approve extra meetings by placing a report on the City Council agenda for consideration.

BE IT FURTHER RESOLVED, that commissions will meet according to the following categories:

Category A. These commissions will meet on their own schedule.

- Board of Library Trustees
- Design Review Committee
- Fair Campaign Practices Commission (established by initiative)
- Housing Advisory Commission
- Landmarks Preservation Commission
- Personnel Board
- Planning Commission
- Police Review Commission (established by initiative)
- Zoning Adjustments Board

Category B. These commissions will have a maximum of ten meetings per year.

- Citizens Humane Commission
- Civic Arts Commission
- Commission on Aging
- Commission on Disability
- Commission on Early Childhood Education
- Commission on Labor
- Community Health Commission
- Community Environmental Advisory Commission
- Disaster and Fire Safety Commission
- Energy Commission
- Homeless Commission



Human Welfare and Community Action Commission  
 Mental Health Commission  
 Parks and Recreation Commission  
 Peace and Justice Commission  
 Public Works Commission  
 Transportation Commission  
 Waterfront Commission  
 West Berkeley Project Area Commission  
 Youth Commission  
 Zero Waste Commission

Category C. These commissions will meet as necessary to fulfill their legal requirements as determined by the board chair and/or staff.

Downtown Berkeley Business Improvement District  
 Elmwood Advisory Board  
 Loan Administration Board  
 Solano Avenue Business Improvement District Advisory Board

Category D. These commissions will meet once quarterly.  
 Commission on the Status of Women

BE IT FURTHER RESOLVED, that commission secretaries will submit an annual commission attendance report for the period November through October to the City Clerk in November of each year.

BE IT FURTHER RESOLVED, that a report presenting commission attendance and meeting frequency will be submitted to the City Council for review in December of each year.

BE IT FURTHER RESOLVED, that any changes to the meeting frequency schedule will be submitted through resolution.

Approved by City Council: January 15, 2008



## APPENDIX O. Policy for Commission Teleconferencing

Approved by Berkeley City Council December 18, 2007

### TELECONFERENCING FOR COMMISSIONERS

#### Criteria for allowing teleconferencing:

Commissioner is unable to attend a commission meeting due to an extreme, unforeseen health or disability situation that would prohibit attendance for a prolonged period of time. Teleconferencing may only be conducted at a meeting location that can accommodate such request as determined by the commission secretary.

#### Procedure for approval (if criteria above can be met):

1. Commissioner must complete a form requesting the ability to teleconference. The form must include the reason that teleconferencing is needed, the timeframe of the request and meeting dates affected, the address and telephone number of the teleconference location and a statement that the commissioner will accept the responsibility to post the meeting notice in accordance with the requirements of the Brown Act and make the location accessible to any member of the public who so desires to attend at that location.
2. The request is placed on the agenda of the next regular commission meeting and is voted upon by the full commission membership. The request must receive a two-thirds vote for approval. In the event of an urgent matter where a special meeting of the commission is called to consider a request to teleconference, the request must be approved at least five business days prior to the meeting date to allow for proper Brown Act noticing.
3. Only one commissioner from any commission may be permitted to teleconference at each meeting.
4. Teleconferencing is not permitted under any circumstance for subcommittee meetings.

#### Teleconferencing will not be approved for:

1. Vacation or business travel.
2. Task Force or sub-committee meetings.

#### Commissions Subject to Teleconferencing Policy:

Board of Library Trustees  
 Citizens Humane Commission  
 Civic Arts Commission  
 Commission on Aging  
 Commission on Disability  
 Commission on Early Childhood Education  
 Commission on Labor  
 Commission on the Status of Women  
 Community Environmental Advisory Commission  
 Community Health Commission



Design Review Committee  
Disaster and Fire Safety Commission  
Downtown Area Plan Advisory Committee  
Downtown Berkeley Business Improvement District Advisory Board  
Elmwood Advisory Board  
Energy Commission  
Fair Campaign Practices Commission  
Homeless Commission  
Housing Advisory Commission  
Human Welfare and Community Action Commission  
Landmarks Preservation Commission  
Loan Administration Board  
Mental Health Commission  
Parks and Recreation Commission  
Peace and Justice Commission  
Personnel Board  
Planning Commission  
Police Review Commission  
Public Works Commission  
Solano Avenue Business Improvement District Advisory Board  
Transportation Commission  
Waterfront Commission  
West Berkeley Project Area Commission  
Youth Commission  
Zero Waste Commission  
Zoning Adjustments Board



## APPENDIX P. General Information for Newly Appointed Commissioners

### APPOINTMENT OF NEW COMMISSIONER

All new appointments, and temporary appointments are processed pursuant to the filing of an appointment form by a city councilmember. The city clerk then verifies the eligibility of the appointee to serve. A person may not be eligible to serve on a particular commission if:

- The ordinance, resolution or other law establishing the commission or regulating its membership has specific eligibility requirements that the appointee cannot meet; or
- The person has served eight consecutive years on the commission and has not been off the commission for a period of two years (those established by initiative may not be subject to this requirement); or
- The person has failed to file conflict of interest statements and has outstanding statements and/or has been removed from office more than once for failure to file statements; or
- The person has been administratively terminated more than four times; or
- There is no open commission seat.

The City Clerk Department prepares the official appointment letter and provides the commissioner with a packet of general information. If the commissioner is designated in the City's Conflict of Interest Code, the appointment package will include instructions along with the Form 700. This form must be filed with the City Clerk within thirty days of the date of the appointment. Then the new appointee must also take the oath of office.

Failure to take the oath within thirty days of the date of the appointment letter and/or failure to file required conflict of interest statements within thirty days of appointment will result in automatic termination from the commission.

#### **PRIOR TO SERVING AND PARTICIPATING AT A COMMISSION MEETING:**

Commissioners must be fully eligible prior to serving at a meeting. Commission secretaries have been instructed to not permit a newly appointed commissioner to participate at a meeting unless the secretary has received notice from the City Clerk Department.

The secretary will officially swear the new commissioner in at the start of his/her first meeting if the commissioner has not already been sworn at the City Clerk Department. The secretary is also required to immediately forward the completed oath to the City Clerk.

#### **LEAVES OF ABSENCE**

Regular attendance at commission meetings is important to enable the commission to proceed with business. If a commissioner has advance notice of potential problems regarding attendance at meetings, a commissioner should notify the commission secretary



and may wish to consider requesting a leave of absence from the appointing councilmember. Failure to obtain a leave of absence may result in automatic termination for absence. See Chapter II, Part A for more information.

A commissioner may also request to be “excused” from a regular commission meeting due to a conflict between the date of the meeting and a religious or cultural holiday. Such a request must be made in writing on a form provided by the City and submitted to the commission secretary prior to the meeting for which the commissioner is to be excused. The request is not subject to commission approval, but shall be accepted upon request. The definition of a religious or cultural holiday is left to the discretion of the individual commissioner.

### **STIPEND/EXPENSES**

In order to remove barriers from citizen participation on commissions, the Council has authorized payment of \$40 per meeting, in lieu of expenses, to Council-appointed members of commissions whose annual family income as filed jointly is below \$20,000 per year. If a commissioner desires to establish stipend eligibility, he/she must file a statement with the commission secretary. It is the secretary’s responsibility to forward statements and meeting information to the City Auditor in a timely manner to ensure proper payment. Specific information related to this is contained in the Stipend Resolution.

### **TERMINATION FROM A COMMISSION**

Commissioners, with a few exceptions, are appointed for terms ending November 30<sup>th</sup> of each year. Commissioners may continue to serve at-will for a period up to eight consecutive years unless replaced by a councilmember anytime after the initial term has ended. See Chapter II, Part A for more information.

### **RESIGNATIONS BY COMMISSIONERS**

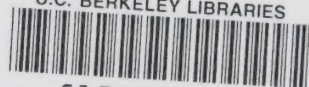
Written resignations by commissioners should be forwarded directly to the City Clerk Department. Resignation letters should state the effective date of the resignation. Verbal resignations and backdated resignations are not considered resignations. The City Clerk Department will provide the resigning commissioner with a Form 700, Conflict of Interest Leaving Office Statement, if applicable, and will copy and distribute the resignation letter to the appointing councilmember and the commission secretary.

### **QUESTIONS REGARDING APPOINTMENT**

If you have any questions regarding an appointment or termination or basic rules contained within the Commissioners’ Manual, please contact the commission secretary.



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